

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



ORIGINAL

75-7209

**United States Court of Appeals**

For the Second Circuit.

EMILE A. WILLIAMS,

Plaintiff-Appellant,

-against-

McALLISTER BROTHERS INC.,

Defendant-Appellee.

*On Appeal From the United States District  
Court For The Southern District Of New York*

**Joint Appendix**

F. L. WERTHEIMER  
Attorney for Plaintiff-Appellant  
15 Park Row  
New York, N.Y. 10038

HEALY & BAILLIE  
Attorney for Defendant-Appellee  
29 Broadway  
New York, N.Y.



PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

EMILE A. WILLIAMS,

71 Civ. 4521

Plaintiff,

RELEVANT DOCKET  
ENTRIES

-against-

McALLISTER BROTHERS INC.,

Defendant,

---

- 10-15-71 Filed Complaint and issued Summons.
- 10-26-71 Filed Summons with Marshal's return served.  
McAllister Brothers Inc., by Miss Rodgers  
on 10-21-71.
- 1-4-72 Filed Answer to Complaint.
- 6-29-72 Filed Answers to Interrogatories.
- 2-6-73 Filed Plaintiff's Answers to Defendant's  
Interrogatories.
- 2-27-74 Filed Defendant's notice to take Deposition  
of Plaintiff on March 21, 1974.
- 4-16-74 Filed Defendant's affidavit and Notice of  
Motion for an Order dismissing the Complaint,  
returnable on: April 30, 1974.
- 4-16-74 Filed Defendant's affidavit of Bruce  
McAllister, Teresa Rogers, William Coleman,  
Jr., and William Coleman, Jr.
- 4-16-74 Filed Defendant's Memorandum of Law in  
support of Motion for Summary Judgment.

- 4-16-74 Filed Deposition of Defendant by George W. Farrell, Jr., taken on October 24, 1972.
- 6-14-74 Filed Plaintiff's Memorandum of Law in opposition to Defendant's motion for Summary Judgment.
- 6-14-74 Filed Plaintiff's Affidavit of Emile Williams in opposition to defendant's motion for an Order dismissing Complaint.
- 6-14-74 Filed Plaintiff's Affidavit of F. L. Wertheimer in opposition to Defendant's Motion for an Order dismissing Complaint.
- 2-25-75 Filed Defendant's Affidavit of Teresa M. Rogers, Assistant Secretary.
- 2-25-75 Filed Defendant's Memorandum "Reply" in support of Motion for Summary Judgment.
- 2-25-75 Filed Memo Endorsed on Defendant's Motion for Summary Judgment: Summary Judgment for Defendant's is granted. So Ordered. - Stewart, J. m/n.
- 2-28-75 Filed Judgment and Order that the Defendant have Judgment against the Plaintiff dismissing the Complaint. -- Clerk.
- 3-21-75 Filed Plaintiff's Notice of Appeal from Final Judgment dismissing the Complaint.

## United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO.

EMILE A. WILLIAMS,

Plaintiff

v.

McALLISTER BROS., INC.

Defendant

SEAMAN'S  
SUMMONSPLAINTIFF DEMANDS  
TRIAL BY JURY

To the above named Defendant :

You are hereby summoned and required to serve upon

F. L. WERTHEIMER, ESQ.

plaintiff's attorney , whose address

15 Park Row  
New York, New York 10038

an answer to the complaint which is herewith served upon you, within      days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date:

New York, New York  
September 21, 1971

(Seal of Court)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

EMILE A. WILLIAMS,  
Plaintiff,

-against-

McAllister Bros., Inc.  
Defendant.

-----X

SUITS UNDER SPECIAL RULE FOR SEAMEN  
TO SUE WITHOUT SECURITY OR PREPAYMENT  
OF FEES, FOR THE ENFORCEMENT OF THE  
LAWS OF THE UNITED STATES, COMMON AND  
STATUTORY FOR THE PROTECTION OF AND  
FOR THE HEALTH AND SAFETY OF SEAMEN  
AT SEA.

Plaintiff, complaining of the defendant, by his  
attorney, F. L. WERTHEIMER, respectfully alleges:

FIRST: Upon information and belief, at all the  
dates and times hereinafter mentioned, the defendant was  
a domestic corporation, engaged in the steamship business  
with an office and place of business in the Borough of  
Manhattan, City and State of New York.

SECOND: At all the dates and times hereinafter  
mentioned, the defendant owned the TUGBOAT BARBARA.

THIRD: At all the dates and times hereinafter  
mentioned, the defendant controlled the TUGBOAT BARBARA.

FOURTH: At all the dates and times hereinafter  
mentioned, the defendant operated the TUGBOAT BARBARA.

FIFTH: At all the dates and times hereinafter  
mentioned, the plaintiff was a member of the crew of the  
TUGBOAT BARBARA, and an employee of the defendant.

SIXTH: That on or about December 6, 1970, without any fault on the part of the plaintiff, and wholly and solely by reason of the recklessness, carelessness and negligence of the defendant, its agents, servants and employees, and by reason of the unseaworthiness of the vessel, plaintiff was caused to sustain injuries.

SEVENTH: As a result of the foregoing, plaintiff was rendered sick, sore, lamed and disabled and sustained severe permanent personal injuries, and was and is internally and externally injured, causing him to suffer pain, and for a time he was prevented from attending to his daily labors, and will in the future be prevented from attending to his daily labors, thereby losing sums of money which he otherwise would have earned as wages, and has endeavored to be cured of his injuries, and has expended sums to maintain himself, and will continue to endure pain and suffering, all to his damage.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS, TOGETHER with the costs and disbursements of this action.

---

F. L. WERTHEIMER  
Attorney for Plaintiff  
15 Park Row  
New York, New York  
WO 4 1860

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EMILE A. WILLIAMS,

Plaintiff,

against

McALLISTER BROS., INC.,

Defendant.

INTERROGATORIES PROPOUNDED BY  
PLAINTIFF PURSUANT TO RULE 33  
OF THE FEDERAL RULES OF CIVIL  
PROCEDURE TO BE ANSWERED UNDER  
OATH WITHIN THIRTY (30) DAYS  
AFTER SERVICE THEREOF.

1. What is the type of vessel known as the TUG-BOAT BARBARA?
2. State the date when and the place where plaintiff was employed by defendant in connection with the TUGBOAT BARBARA; the capacity in which he was employed; and the rate of wages.
3. State the date when and place where plaintiff signed shipping articles for a voyage on the TUGBOAT BARBARA last prior to December 6, 1970.
4. State the date when and place where plaintiff was discharged from the TUGBOAT BARBARA following December 6, 1970. If plaintiff was discharged prior to the termination of the shipping articles, the grounds or reason for such discharge.
5. Was an official log maintained on the TUGBOAT BARBARA for the voyage including December 6, 1970?

6. If your answer to the preceding interrogatory No. 5 is in the affirmative, state the date when and the name of the port where such log was filed with the Shipping Commissioner.

7. Was plaintiff physically examined by a doctor or physician at the instance of defendant relative to plaintiff's fitness for duty on the TUGBOAT BARBARA for the voyage commencing on or about December 6, 1970?

8. If your answer to the preceding interrogatory No. 7 is in the affirmative, state the date when, place where and the name and address of the doctor or physician by whom plaintiff was examined. If a written report or memorandum of such examination was made, please state the location thereof.

9. State the number of hours overtime that plaintiff was employed during the period of the voyage and estimated monthly costs for plaintiff's room and board aboard the vessel for said voyage.

10. State the dates during which time plaintiff was paid for wages and overtime for his employment aboard the vessel and the date of the last payment.

11. State whether plaintiff was employed by defendant prior to the voyage in question. If so, state the name of the vessel or vessels, the dates employed and plaintiff's capacity and efficiency rating, and whether plaintiff made any claims for illness or injury aboard said vessels for said voyages.

12. If your answer to the preceding interrogatory No. 11 is in the affirmative, state whether plaintiff was given a pre-sign on physical examination before the commencement of each voyage prior to the voyage in question,

and, if so, state the name and address of the doctor or physician by whom plaintiff was examined. If a written report or memorandum of such examination was made, please state the location thereof.

13. Did plaintiff make a report of injury or illness during the voyage of the TUGBOAT BARBARA, including December 6, 1970?

14. If your answer to the preceding interrogatory No. 13 is in the affirmative, state the date and time such report was made, and the name and rank of the person to whom such report was made.

15. Has defendant received any written notice or report of an accident, injury or illness to plaintiff occurring during the voyage of the TUGBOAT BARBARA, including December 6, 1970?

16. If your answer to the preceding interrogatory No. 15 is in the affirmative, state the present location of such notice or report.

17. Was any medical care, treatment or assistance or medication given to plaintiff during the voyage of the TUGBOAT BARBARA, including December 6, 1970?

18. If your answer to the preceding interrogatory No. 17 is in the affirmative, state the name and address of the person who gave such medical care, treatment, assistance or medication, describing the same and the dosage of any medication given.

19. State the location of the TUGBOAT BARBARA on the date of the accident.

20. If your answer to the preceding interrogatory No. 19 is to the effect that the TUGBOAT BARBARA was at a port, state the name of the port; the date and time of arrival; the date and time the vessel was secured to the dock

or anchorage; and the date and time watches were broken.

21. If your answer to interrogatory No. 19 is to the effect that the vessel was at sea, state the next port of call and date of arrival thereat.

22. State the present location of the following rough and smooth logs of the TUGBOAT PARRARA for the voyage, including December 6, 1970: (a) deck log; (b) engine room log; (c) medical log; and (d) radio log.

23. State the name and address of each person from whom defendant, its attorney or any person acting for or in the interest of defendant, has obtained statements in writing concerning said matter of this action, giving the dates and places where they were taken; stating whether or not such statements were signed or unsigned; and their present location.

24. Did defendant or its agents, representatives or underwriters, or any other person acting for or on behalf of said defendant, take a statement from plaintiff?

25. If your answer to the preceding interrogatory No. 24 is in the affirmative, describe such statement, giving the date thereof and state its present location.

26. Did defendant, its agents, representatives, or underwriters receive any written communications or memoranda from the master, officers or members of the crew of the TUGBOAT BARBARA for the voyage, including December 6, 1970, concerning or relating to plaintiff or any accident injury or illness sustained by plaintiff during the voyage?

27. If your answer to the preceding interrogatory No. 26 is in the affirmative, state the location of such communications or memoranda and describe same, giving the name of the person sending same, the date thereof and the

name and address of the person receiving same, other than defendant.

28. State the dates from when to when defendant paid to plaintiff: (a) earned wages; (b) unearned wages; (c) maintenance; (d) subsistence; (e) transportation; and the amount in each instance.

29. State the present location of the payroll vouchers and overtime records showing the earnings of the members of the crew of the TUGBOAT BARBARA, for the voyage including December 6, 1970.

30. State the itinerary of the TUGBOAT BARBARA for the voyage, including the date of the accident, giving the ports of call and the hour and date of arrival and of departure with respect to each port.

31. State whether or not defendant, its attorneys underwriters or anyone on its behalf, boarded the TUGBOAT BARBARA at any time in order to make an investigation concerning this case and/or to take photographs.

32. If your answer to the preceding interrogatory No. 31 is in the affirmative, state (a) date or dates thereof; (b) whether at that time or at any other time photographs were taken on your behalf aboard the TUGBOAT BARBARA; (c) if so, state the present location thereof.

33. State whether or not plaintiff was assigned to a sea watch during the voyage in question and, if so, the hours of such watch and last known address and rank of the officer in charge thereof.

34. State the name, last known address and Z number of each and every crew member assigned to the same watch as plaintiff.

35. State in detail the manner in which it will be claimed that plaintiff's own negligence caused his illness

and injuries, setting forth each and every alleged act of contributory negligence upon which defendant will rely.

36. State whether defendant claims the existence in plaintiff of any prior medical condition which it is claimed caused or contributed to plaintiff's accident or injuries and, if so, state the nature of the prior existing condition and the manner in which it caused or contributed to plaintiff's accident.

37. State the dates of the meetings of the safety committee of the TUGBOAT BARBARA next prior to and next following December 6, 1970 and the present location of the minutes thereof.

38. Was United States Coast Guard Form 924-e filed with the United States Coast Guard or any Shipping Commissioner in connection with plaintiff's service aboard the defendant's vessel? If so, state when and where the same was filed.

39. State the place aboard the vessel where said accident occurred, giving the location in relation to other parts of the vessel in the immediate vicinity.

40. State the weather conditions existing at the time of the accident.

41. State the name and capacity of plaintiff's immediate superiors aboard the vessel.

42. State the name and capacity under whose direction and/or orders plaintiff was working when the accident occurred.

43. State the operation and nature of the work at which plaintiff was engaged at the time of his accident.

44. State the name and capacity of the person who was in charge of the watch in which plaintiff was engaged at the time of his accident.

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45. State the location at which said person in the preceding interrogatory No. 44 was stationed during said watch.

46. State the names, addresses and capacity of all eyewitnesses to plaintiff's accident complained of herein.

47. State whether said witnesses are still in the employ of defendant company.

48. State whether or not plaintiff was examined and/or treated by doctors of defendant's choice prior to the commencement of this action.

49. If your answer to the preceding interrogatory No. 48 is in the affirmative, state the names and addresses of all doctors so examining and/or treating plaintiff, together with the present locations of any reports submitted by said doctors.

50. State whether or not plaintiff was employed or served aboard any vessel owned or operated by defendant at any time after December 6, 1970.

51. If your answer to the preceding interrogatory No. 50 is in the affirmative, state the name of the vessel or vessels, the nature of plaintiff's employment, the dates of said employment, and the amount of wages paid to plaintiff.

52. Please set forth the names and addresses of all of the crew of the TUGBOAT BARBARA for the aforesaid voyage. (Defendant, in lieu thereof, may attach a copy of the shipping articles.)

DATED: NEW YORK, NEW YORK  
October 8, 1971

Yours, etc.,

---

F.L.WENTHEIMER  
Attorney for Plaintiff  
15 Park Row  
New York, New York 10038  
964-1860

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
EMILE A. WILLIAMS,

Plaintiff,

-against-

McCALLISTER BROTHERS, INC.,

71 Civ. 4521

ANSWER

Defendant.

-----x  
Defendant McAllister Brothers, Inc. as and for its answer herein, by its attorneys Healy & Baillie, allege on information and belief as follows:

FIRST: Admits the allegations contained in Paragraph First, except denies it was engaged in the steamship business.

SECOND: Admits the allegations contained in Paragraph Second.

THIRD: Denies the allegations contained in Paragraphs Third and Fourth.

FOURTH: Denies that Plaintiff was an employee of Defendant McAllister Brothers, Inc., but admits that Plaintiff was a member of the crew of the Tugboat BARBARA McALLISTER.

FIFTH: Denies the allegations contained in Paragraphs Sixth and Seventh.

AS AND FOR A FIRST AFFIRMATIVE  
DEFENSE DEFENDANT McALLISTER  
BROTHERS, INC. ALLEGES ON IN-  
FORMATION AND BELIEF AS FOLLOWS:

SIXTH: If Plaintiff incurred any injuries on or about December 6, 1970, they were caused solely by reason of the negligence of Plaintiff.

WHEREFORE Defendant McAllister Brothers, Inc. demands judgment dismissing the complaint with costs and such other and further relief as to this Court seems just.

HEALY & BAILLIE

By   
A Member of the Firm  
Attorneys for Defendant  
29 Broadway  
New York, New York 10006  
943-3980

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

EMILE A. WILLIAMS,

Plaintiff,

71 Civ. 4521

-against-

McALLISTER EROS., INC.,

ANSWERS TO  
INTERROGATORIES

Defendant.

-----x

1. Tugboat - name, BARBARA McALLISTER.

Plaintiff was never employed by Defendant. At the material time, Plaintiff was employed by Port San Juan Towing Company, a separate corporate subsidiary of Defendant, from whose files the following information was obtained:

2. Date employed: November 23, 1970  
Place employed: San Juan, Puerto Rico.  
Capacity: Cook  
Wage rate: \$17.60 per day. Overtime \$4.69 per hour.  
Vacation: One half day per day worked.

3. Articles unnecessary and not signed.
4. Discharge on December 6, 1970, due to alleged injury.
5. An unofficial log was maintained.
6. Not applicable.
7. No.
8. Not applicable.

9. There was no "voyage" as such. The number of hours overtime worked by Plaintiff from November 24, 1970 to December 6, 1970 was 50.

Estimated cost of food and miscellaneous provisions per month is \$100.

10. Employment commenced: November 23, 1970.
11. No.
12. Not applicable.
13. Yes.
14. Accident was reported immediately to Ralph Cases, Master and Carlos Cardona, Mate.
15. Defendant has copy of report sent to Port San Juan Towing Company.
16. Copy attached.
17. Ambulance was called immediately after accident. No other treatment given Plaintiff.
18. Not applicable.
19. Port San Juan harbor, Pier 9, Catano Oil Dock.
20. Arrived: 0750, December 4, 1970;  
Secured: 0920, December 4, 1970;  
Watches were not broken.
21. Not applicable.
22. Deck and engine logs are at San Juan, Puerto Rico, in the office of the Port San Juan Towing Company. The Tug does not maintain a medical log or a radio log.
23. Other than report mentioned in paragraph 15, no written statement has been obtained.
24. No.
25. Not applicable.
26. Other than as described in paragraph 15, no.
27. Not applicable.
28. Defendant McAllister Bros., Inc. did not employ Plaintiff and therefore did not pay him the items set forth in Interrogatory 28.
29. Office of Port San Juan Towing Company, San Juan, Puerto Rico.

30. The Tug was not on a "voyage" at the time of the alleged incident.

31. No.

32. Not applicable.

33. Not applicable.

34. Plaintiff does not stand a watch.

35. Plaintiff boarded the Tug negligently in that he did not look carefully at his intended path and was carrying an unnecessarily large amount of bags and/or boxes. Other elements of negligence are being investigated and may be revealed in the course of discovery.

36. No, pending discovery.

37. Not applicable.

38. Copy attached.

39. Main deck, starboard side midships.

40. High swells, temperature 76°, cloudy sky, no wind.

41. Ralph Cases, Master; Carlos Cardona, Mate.

42. Not applicable.

43. Boarding Tug.

44. Not applicable.

45. Not applicable.

46. None.

47. Not applicable.

48. No.

49. Not applicable.

50. No.

51. Not applicable.

52. Names and addresses are:

Ralph Cases  
Calle 205-D-A 29  
Urb. Valle Arriba Heights  
Carolina, P.R. 00630

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Carlos J. Cardona  
Calle 6-A CK 29  
Urb. Rexville  
Bayamon, P.R.

Luis Santiago Sanchez  
Calle San Agustin # 257  
Puerta de Tierra, P.R. 00906

Willaim Ocasio  
Calle M. Alonso B.U. 33  
Urb. Levittown Lakes  
Catano, P.R. 00632

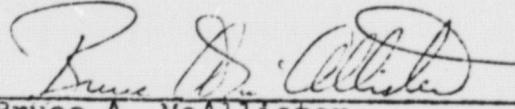
Pedro J. Padilla  
Urb. Bahia " 78  
Guanica, P.R.

James D. Gates  
5114 Parklawn Terrace - Ap. 301  
Rockville, Maryland 20852

Dated: New York, New York  
June 28, 1972

Yours, etc.  
HEALY & BAILLIE  
Attorneys for Defendant  
McAllister Brothers Inc.

By:

  
Bruce A. McAllister  
29 Broadway  
New York, New York 10006  
943-3980

ONLY COPY AVAILABLE

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DAMAGE REPORT

ALL QUESTIONS MUST BE ANSWERED.

This blank to be filled out and handed in at office of the company. All damages however slight must be reported at once. Report must be signed by the captain and by the pilot also if on duty. Captains and pilots will be suspended or discharged for failure to report any damage promptly.

PORT SAN JUAN TOWING CO.

Tug Barbara McAllister Date Sunday 6, 1970  
Damage occurred on the 6 day of Dec 1970 at 0015 o'clock A.M.  
Captain on duty \_\_\_\_\_ Pilot on duty Charles Cardona  
Engineer on duty \_\_\_\_\_ Fireman on duty \_\_\_\_\_  
Deckhands on duty P.J. Padilla  
Draft Forward Vessel in tow \_\_\_\_\_ Draft Aft Vessel in tow \_\_\_\_\_  
Bound from \_\_\_\_\_ to \_\_\_\_\_  
Place and where accident occurred Langside Entaire O.I. Docks  
Distance from nearest shore \_\_\_\_\_  
Name of boat damaged \_\_\_\_\_ name of owner \_\_\_\_\_  
With \_\_\_\_\_ in tow \_\_\_\_\_  
Name of boat doing damage \_\_\_\_\_ name of owner \_\_\_\_\_  
EXTENT OF DAMAGE \_\_\_\_\_  
NAME OF VESSELS IN VICINITY \_\_\_\_\_  
Condition of tide \_\_\_\_\_ Direction and force of wind \_\_\_\_\_  
State of weather \_\_\_\_\_

Radar Operating Yes \_\_\_\_\_ No \_\_\_\_\_

Name and addresses of witnesses Charles Cardona, P.J. Padilla

Port San Juan Towing Pier 9 San Juan

STATEMENT

Give here full details. If collision, state when boat was first seen, whistles blown by each, bells given, time between bells, bearing of vessels, and if course was changed at any time, lights displayed by each boat, etc., nature of damage and what you did to save the injured boat.

Also give diagram of existing condition at time of accident on reverse side of sheet.

0015 while a landside barge "Triton" discharging in Calamo oil docks. the cook Emile Williams fell from ladder on top deck of the boat while stepping off the barge Triton. the office was called to send an ambulance. the man fell on his back on the main deck of the boat. 0010 Ambulance arrived 0010 Ambulance was with injured man and P.J. Padilla to the hospital.

THIS STATEMENT GIVEN TO THE COMPANY ATTORNEY

Captain P.J. Padilla

Pilot Charles Cardona

DEPARTMENT OF  
TRANSPORTATION  
U. S. COAST GUARD  
CG-924E (Rev. 3-67)

## REPORT OF PERSONAL INJURY OR LOSS OF LIFE

Form Approved Budget Bureau  
No. 48-R142.6  
REPORTS CONTROL SYMBOL  
MVI-4016

## INSTRUCTIONS

- This form shall be completed for every loss of life and for every injury which incapacitates the injured for a period in excess of seventy-two hours (3 days), if the accident involves any vessel except those numbered under the Federal Boating Act.
- Injuries to longshoremen or harbor workers are not required to be reported unless the injury arises out of failure of ship's equipment, a vessel casualty, misconduct or negligence of ship's personnel or the injury results in death.
- A signed original and two signed copies shall be submitted as soon as possible to the Officer in Charge, Marine Inspection, U. S. Coast Guard, in whose district the accident occurred, or in whose district the vessel first arrive(s)(d) after such casualty.
- The master or person in charge is required to report in person to the Officer in Charge, Marine Inspection as soon as possible after the casualty occurs unless it can be shown that it was inconvenient to do so because of the distance involved. However, nothing shall relieve the person in charge of the vessel from submitting this report.
- This report should be completed in full. Blocks which do not apply to a particular case should be indicated as "NA." Where answers are unknown or none, they should be indicated as such.
- Report all vessel casualties or accidents on Form CG-2692, Report of Vessel Casualty or Accident. Attach a Form CG-924E to the CG-2692 for each person killed, missing or injured as a result of the marine casualty or accident.

TO: Officer in Charge, Marine Inspection, Port of San Juan, P.R.		DATE SUBMITTED 3/7/72
I. PARTICULARS OF VESSEL		
1. NAME OF VESSEL BARBARA MC ALLISTER	2. OFFICIAL NUMBER 207815	3. VESSEL INSPECTED BY USCG <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
4. NATIONALITY US		
5. TYPE OF VESSEL (Frt., pass., tr., etc.) Tugboat	6. PROPULSION (Steam, diesel, etc.) Diesel	7. NAME OF OWNER(S) & OPERATOR(S), OR AGENT (Indicate which) Port San Juan Towing Company - Operator
8(a) NAME OF MASTER OR PERSON IN CHARGE (Indicate which) RAFAEL CASES	(b) LICENSED BY COAST GUARD <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
II. PARTICULARS OF PERSON INJURED, DECEASED OR MISSING (Believed dead)		
9(a) NAME OF PERSON EMILE WILLIAMS	(b) HOME ADDRESS Paseo Amparo 2490 G Levittown, P.R.	(c) DATE OF BIRTH 3-3-1920
10. COOK OR "Z" NUMBER 677673	11. LICENSED BY COAST GUARD <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	12. STATUS OR CAPACITY ON VESSEL Cook
13. ACTIVITY ENGAGED IN AT TIME OF CASUALTY Returning from liberty.	14. IF CREW MEMBER OR SHORE WORKER <input type="checkbox"/> ON WATCH <input type="checkbox"/> WORKING <input checked="" type="checkbox"/> OTHER	
15(a) NAME OF IMMEDIATE SUPERVISOR AT TIME OF CASUALTY Carlos Cardona	(b) SUPERVISOR'S CAPACITY OR STATUS ON VESSEL Mate	
III. PARTICULARS OF ACCIDENT OR CASUALTY		
16. DATE OF CASUALTY 12-6-70	17. TIME OF CASUALTY (Local or Zone) 0015 INT	18. ZONE DESCRIPTION + 4
19. TIME OF DAY <input type="checkbox"/> DAY <input checked="" type="checkbox"/> NIGHT <input type="checkbox"/> TWILIGHT		
20(a) DID CASUALTY OCCUR WHILE UNDERWAY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	(b) IF YES, LAST PORT OF DEPARTURE ---	(c) IF YES, WHERE BOUND WHEN CASUALTY OCCURRED ---
21(a) VESSEL LOCATION AT CASUALTY (Latitude and longitude; distance and TRUE bearing from charted object; docked anchored, etc.) Catalão Oil Dock		(b) BODY OF WATER (Geographical name) San Juan Harbor
22(a) RESULT OF CASUALTY: <input checked="" type="checkbox"/> INJURY <input type="checkbox"/> DEATH <input type="checkbox"/> MISSING (Complete INJURY or DEATH entries below, as appropriate)		
(b) NATURE OF INJURY Reported pain in back.		(c) TOTAL DAYS INCAPACITATED Not known
(d) REASON FOR DEATH -----		(e) LOCATION OF INDIVIDUAL AT DEATH -----
		(f) DATE OF DEATH -----

23. DESCRIPTION OF CASUALTY (Give events leading up to casualty and how it occurred. Attach diagram & additional sheets, if necessary.)

12-6-70 at 0015.

Cook Emile Williams fell from ladder on top deck of the boat, while stepping off to the barge TRITON. Called the office to get an ambulance. Shift the boat to the dock to be able to put the man ~~in~~ ashore. The man fell on his back and may have internal injuries. The man was not moved until qualified medical personnel arrived. 0040 Ambulance arrived and took the man to Hospital. Sent deckhand Padilla along.

24. WITNESSES TO ACCIDENT (At least two, if possible)

NAME NONE	NAME
ADDRESS	ADDRESS
NAME	NAME
ADDRESS	ADDRESS

IV. ASSISTANCE AND RECOMMENDATIONS

25(a) MEDICO (Medical) MESSAGE SENT	(b) IF YES, GIVE DATE OF FIRST MESSAGE	(c) IF YES, GIVE TIME OF FIRST MESSAGE (Local or zone and description)
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	-----	-----
26(a) TREATMENT ADMINISTERED	(b) IF YES, BY WHOM	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<input type="checkbox"/> SHIP'S DOCTOR <input checked="" type="checkbox"/> OTHER SHIP'S PERSONNEL <input type="checkbox"/> OTHER (Specify)	

27. BRIEFLY DESCRIBE TREATMENT (If administered by other than H. D.)

Ambulance called and man dispatched to Fondo del Seguro Clinic.

28(a) NAME OF HOSPITAL, IF PERSON WAS HOSPITALIZED	(b) ADDRESS OF HOSPITAL
Centro Médico	Río Piedras.

29. RECOMMENDATIONS FOR CORRECTIVE SAFETY MEASURES PERTINENT TO THIS CASUALTY

TITLE Captain	SIGNATURE
---------------	-----------

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
EMILF A. WILLIAMS, :  
Plaintiff, : 71 Civ. 4521/CES  
- against - :  
McALLISTER BROS., INC., : NOTICE OF DEPOSITION  
Defendant. :  
-----x

SIRS:

PLEASE TAKE NOTICE, that pursuant to Rule 30 of the Federal Rules of Civil Procedure the undersigned attorneys for the defendant will take the deposition upon oral examination of the plaintiff, Emile A. Williams at 10:00 A.M. on the 21st day of March, 1974, and from day to day thereafter until the deposition is concluded, before a Notary Public or other officer qualified to administer oaths, at the office of Healy & Baillie, 29 Broadway, New York, New York in Room 2600.

Yours, etc.

---

HEALY & BAILLIE  
Attorneys for Defendant  
29 Broadway  
New York, N. Y. 10006

To: F. L. WERTHEIMER  
Attorney for Plaintiff  
15 Park Row  
New York, New York 10038

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x

EMILE A. WILLIAMS, :  
Plaintiff, :  
-against- : 71 Civ. 4521  
McALLISTER BROS., INC., : NOTICE OF DEPOSITION  
Defendant. :  
----- x

SIRS:

PLEASE TAKE NOTICE, that pursuant to Rule 30 of the Federal Rules of Civil Procedure, the undersigned will take the deposition upon oral examination of the defendant by an officer having knowledge of the facts and the corporate structure, stock ownership, etc., at 2:30 P.M. on the 6th day of October, 1972, before a notary public or some other officer authorized to administer oaths at the offices of the undersigned at 15 Park Row, New York, New York 10038, Room 530.

Dated: New York, New York  
September 26, 1972

YOURS, ETC.,

---

F. L. WERTHEIMER  
Attorney for Plaintiff  
15 Park Row  
New York, New York 10038

TO:  
HEALY & BAILLIE  
Attorneys for Defendant  
29 Broadway  
New York, New York 10006

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
EMILE A. WILLIAMS, :  
Plaintiff, : NOTICE OF MOTION  
- against - :  
McALLISTER BROTHERS INC., : 72 Civ. 4521  
Defendant. : (C.E.S.)  
-----x

S I R S:

PLEASE TAKE NOTICE that upon the annexed affidavit of Bruce A. McAllister, Esq., sworn to the 15th day of April, 1974, the affidavit of Teresa M. Rogers, sworn to the 10th day of April, 1974, the two affidavits of William J. Coleman, Jr., sworn to the 28th day of March, 1974, the memorandum of law submitted herewith, the deposition of George W. Farrell, Jr., accompanied by a supplementary statement dated April 15, 1974, attached thereto, and upon the pleadings heretofore filed herein, the defendant, McAllister Brothers Inc. will move this Court at a motion term thereof to be held in Room 2602, U. S. Courthouse, Foley Square, New York, New York on the 30th day of April, 1974, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure dismissing the complaint on the ground that it was not the employer of the Plaintiff, that it had bareboat chartered the Tug to Plaintiff's employer prior to the accident, and that the Workmens Accident Compensation Statute of Puerto Rico bars the suit.

25

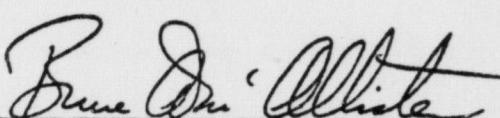
- 2 -

Dated: April 15, 1974  
New York, New York

Yours, etc.

HEALY & BAILLIE

By



A Member of the Firm  
Attorneys for Defendant  
Office & P. O. Address  
29 Broadway  
New York, N. Y. 10006

TO: F. L. WERTHEIMER, ESQ.  
15 Park Row  
New York, N. Y.

Attorneys for Plaintiff

(13)

26

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
EMILE A. WILLIAMS, :  
Plaintiff, : 72 Civ. 4521  
: (C.E.S.)  
- against - :  
McCALLISTER BROTHERS INC., :  
Defendant. : AFFIDAVITS  
-----x

AFFIDAVIT OF BRUCE A. McALLISTER, ESQ.

AFFIDAVIT OF TERESA M. ROGERS

AFFIDAVIT I OF WILLIAM J. COLEMAN, JR.

AFFIDAVIT II OF WILLIAM J. COLEMAN, JR.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
EMILE A. WILLIAMS, :  
Plaintiff, : 72 Civ. 4521  
- against - : (CES)  
McALLISTER BROTHERS INC. : AFFIDAVIT  
Defendant. :  
-----x  
STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:  
)

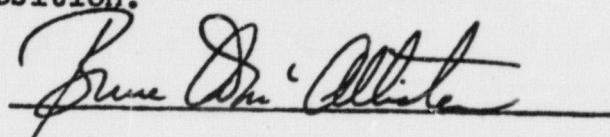
BRUCE A. McALLISTER, being duly sworn, deposes  
and says:

1. I am an attorney duly admitted to practice before the bar of this Court, I am a member of the firm of Healy & Baillie, attorneys for defendant, McAllister Brothers Inc., and am fully familiar with the facts of this case and the proceedings heretofore. I make this affidavit in support of defendant McAllister Brothers Inc. motion for summary judgment.
2. Accompanying this motion and made a part thereof, in addition to my affidavit, are the affidavits of Teresa M. Rogers, two affidavits of William J. Coleman, Jr., the deposition of George W. Farrell, Jr., accompanied by a supplementary statement.
3. Mr. Coleman prepared his affidavit on the understanding that both Port San Juan Towing Company and McAllister Brothers Inc. were named defendants in this case, and he therefore prepared a separate affidavit for each company.

Although the affidavits overlap to a great extent, both are relevant to this motion despite the fact that Port San Juan Towing Company is not a named defendant and we therefore have included both affidavits in this motion, denominating them respectively as Coleman Affidavit I and Coleman Affidavit II.

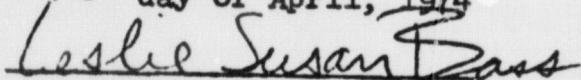
4. The summary statement attached to the deposition of George W. Farrell, Jr. is not a sworn document, but is supplied as a supplement to his deposition providing information of which Mr. Farrell was unaware at the time of his deposition. Mr. Farrell is no longer with McAllister Brothers Inc. and the information contained in the supplementary statement was obtained by the undersigned in interviews with various operating personnel of defendant, McAllister Brothers Inc. It is my understanding that plaintiff's attorney will accept the information provided in this form. In any event, I have offered Mr. Farrell's sworn testimony principally in connection with his answer to Mrs. Wertheimer's question on Page 17 in which Mr. Farrell states that Mr. Coleman made all the operating decisions within a framework or guidelines set forth by McAllister Brothers Inc.

5. Mrs. Wertheimer has in her possession the only signed copy of Mr. Farrell's deposition.



Sworn to before me this

15<sup>th</sup> day of April, 1974



LESLIE SUSAN BASS  
Notary Public, State of New York  
No. 30-4501050 Qual. in Nassau Co.  
Certificate filed in New York County  
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----x  
EMILE A. WILLIAMS,

Plaintiff, :

71 Civ. 4521/CES

- against - :

McALLISTER BROS. INC., :

AFFIDAVIT

Defendant. :

-----x  
STATE OF NEW YORK

COUNTY OF NEW YORK

Teresa M. Rogers, being duly sworn, deposes and says:

1. I am the Assistant Secretary of McAllister Brothers Inc., and have occupied that position since October, 1968.
2. I have reviewed the document attached to the affidavit of William J. Coleman, and referred to therein as the charter of the Tug BARBARA McALLISTER.
3. I hereby confirm that the charter so attached and referred to is authentic and that I executed the charter on behalf of McAllister Brothers Inc.
4. I further confirm that the name of the Tug at the inception of the charter was GLADIATOR and that her name was thereafter changed to BARBARA McALLISTER.
5. I further confirm that the Tug was operating under the terms of the charter at the time of the accident alleged in the complaint herein.

**30**

- 2 -

6. Attached hereto as Exhibit A is a copy of a paid invoice issued by McAllister Brothers Inc. to Port San Juan Towing Company for charter hire for the month during which the accident allegedly occurred.

Teresa M. Rogers  
Teresa M. Rogers

Sworn to before me this 1<sup>st</sup>  
day of April, 1974.

Bruce Kaplan

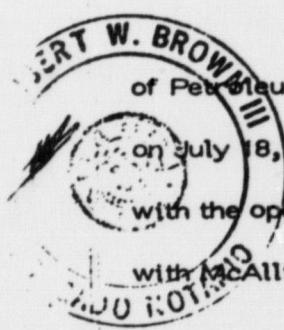
Notary Public  
STATE OF NEW YORK  
No. 2155475  
Qualified in Ulster County  
Commissioned April 1, 1976

AFFIDAVIT OF  
WILLIAM J. COLEMAN, JR.

I

William J. Coleman, Jr., being duly sworn, deposes and says:

1. I am presently Vice President and General Manager of Port San Juan Towing Company (hereinafter, "PSJT"); I make this affidavit in support of the motion of Defendant McAllister Brothers, Inc. for Summary Judgment dismissing the complaint filed by Plaintiff Emile Williams.
2. PSJT is a wholly-owned subsidiary of McAllister Brothers, Inc. It is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico. Attached hereto as Exhibit A is a copy of a certificate of good standing of PSJT issued by the Department of State of Puerto Rico on August 24, 1973. As the certificate indicates, PSJT's Certificate of Incorporation was filed on March 3, 1967.



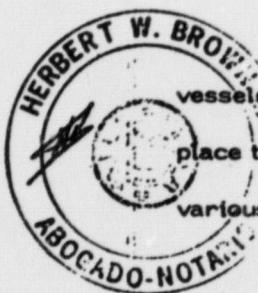
3. I was first employed by PSJT in March of 1970 as Manager of Petroleum Transportation. I became Vice President and General Manager on July 18, 1971. In those capacities I have been, and am, fully familiar with the operations and management of PSJT and the relationship of PSJT with McAllister Brothers, Inc.

4. PSJT operates tug boats and barges in and around Puerto Rico. It owns no equipment itself. Most of the vessels operated by PSJT are bareboat-chartered from McAllister Brothers, Inc., but PSJT has, and still does operate vessels belonging to the following companies under time charters, bareboat charters and various management contracts: Puerto Rico Sun Oil Company; Judge Oil Co.; P.C.I. International, Inc.; Twenty Grand Corp.; Indian Towing Co.; Crescent Towing & Transportation Inc.; Domar, Inc.; Ocean Services Inc.; and others.

Attached as Exhibit B is a copy of the bareboat charter c  
the tug BARBARA McALLISTER. That tug has been operated by PSJT  
since April 10, 1968 , and was being operated by PSJT on  
December 6, 1970.

5. As bareboat charterer and operator of the tug BARBARA  
McALLISTER, as well as the other vessels bareboat chartered from time  
to time from McAllister Brothers, Inc. and other companies, PSJT  
exercising sole responsibility for crewing, supplying, fueling, maintaining  
and repairing those vessels. PSJT employs the members of the tugs'  
crews and assigns each crew member to a particular tug and to a particular  
duty aboard the tug (master, mate, deckhand, cook or engineer).

All decisions concerning routine maintenance and repairs  
are now, and during my employ, have been, made by PSJT. Major repairs,  
of course, may require the knowledge and concurrence of the owners of  
the vessels.



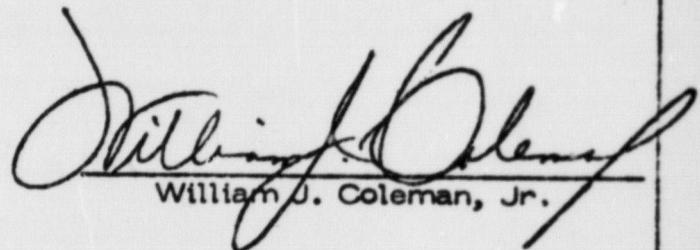
6. PSJT, under my direction, controls the movement of the  
vessels operated by it, including the tug BARBARA McALLISTER, from  
place to place, and negotiates the contracts by which the vessels service  
various customers.

PSJT retains its own local accountants (Arthur Andersen  
& Co.) and its own local attorneys (Jimenez & Fuerte). All books and  
records of PSJT are prepared in Puerto Rico under my supervision.  
These are retained in Puerto Rico and copies are sent to McAllister  
Brothers, Inc. in New York as requested.

7. According to the records of PSJT, kept in the ordinary  
course of PSJT's business, including the "Damage Report" attached  
hereto as Exhibit C, Plaintiff was injured while attempting to walk across

a ladder, one end of which had been placed on the tug's top deck and the other on the deck of a barge. Plaintiff had come from the dock to the barge, and was attempting to cross from the barge to the tug. No allegation has been made that the tug or any of its appurtenances were unseaworthy as of the date of the commencement of the bareboat charter of the BARBARA McALLISTER.

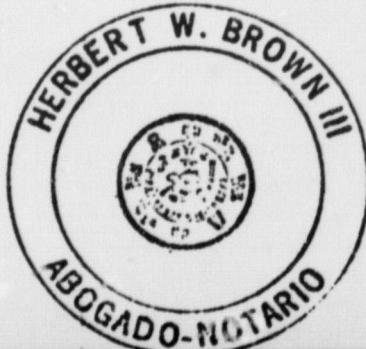
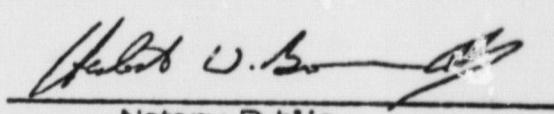
8. I make this affidavit in support of the motion of Defendant McAllister Brothers, Inc. for Summary Judgment dismissing the cor. plaint on the grounds that McAllister Brothers, Inc. did not operate or control the tug BARBARA McALLISTER at the time of the alleged injury.



William J. Coleman, Jr.

Affidavit No. 24

Sworn and subscribed to before me by William J. Coleman, Jr.,  
of legal age, married, a resident of San Juan, Puerto Rico and Vice  
President and General Manager of Port San Juan Towing Company in  
San Juan, Puerto Rico this 28<sup>th</sup> day of March, 1974.

Herbert W. Brown III  
Notary Public

COMMONWEALTH OF PUERTO RICO  
DEPARTMENT OF STATE  
SAN JUAN, PUERTO RICO 00901

I, GLORIA I. SILVA DE DIAZ, Assistant Secretary of State of the Commonwealth of Puerto Rico, DO HEREBY.

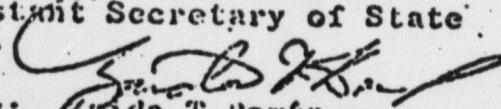
CERTIFY: That from the records of this department it appears that PORT SAN JUAN TOWING COMPANY CORP., is a corporation organized under the laws of Puerto Rico on March 3, 1967 at 4:10 P.M., file number 17,487.-----

AND I FURTHER CERTIFY: That the corporation is in good standing so far as this department is concerned and that the documents on record in this department for above mentioned corporation are:

Certificate of Incorporation-----Filed on March 3, 1967  
Corporation reports for the years 1968 through 1972, both inclusive

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this twenty-fourth day of August, A.D., nineteen hundred and seventy-three.

Gloria I. Silva de Diaz  
Assistant Secretary of State

By:   
Acting Chief Corporation Division



BAREBOAT CHARTER AGREEMENT

Bareboat Charter Agreement entered into this 1st day of May, 1968 between Port San Juan Towing Company Corporation and McAllister Brothers Inc., on the following terms and conditions:

1. McAllister Brothers Inc., as Owner, agrees to let and Port San Juan Towing Company Corporation, as Charterer, agrees to hire the Tug GLADIATOR on May 1st, 1968, Official Number 207815.
2. The said Vessel shall be delivered to the Charterer, on May 1st, 1968, at a safe wharf or place in the Port of San Juan, Puerto Rico and shall on delivery be in a seaworthy condition and fully equipped.
3. The said Vessel shall be employed by the Charterer in lawful towing service primarily in the Caribbean area, but not outside of the prescribed insurance navigational limits.
4. The Charterer shall at its own expense, crew, victual, fuel and supply the said Vessel and shall pay for all port charges, deck and engine room stores, running expenses and all other costs and charges incidental to the use and operation of the said Vessel.
5. The Charterer shall maintain the Vessel in a thoroughly efficient state in equipment, hull and machinery.
6. This Charter has been arranged for a period of one year, commencing May 1st, 1968 and is renewable thereafter on a year-to-year basis, subject to the right of termination by either party upon giving 30 days' prior notice.
7. The Charter hire shall be at the rate of \$72.33 per day or any part thereof.
8. The Charterer shall at its own expense maintain the existing insurances on the said Vessel and will name the Owner as its interest may appear, against all usual fire and marine risks, including full form of Tower's Liability Insurance. In

the event of a total loss, actual or constructive, the proceeds of such insurance shall be paid to the Owner, but in the event of a partial loss, any monies payable by Underwriters in respect thereof, shall be paid to the Charterer for the purpose of repairing the damage; any losses unpaid by Underwriters by reason of deductible provisions in the policies of insurance, shall be borne by the Charterer.

9. The said Vessel shall be redelivered by the Charterer to a point in Puerto Rico or U. S. East Coast designated by owner, in the same good order and condition (ordinary wear and tear excepted) and on such redelivery, the said Charter shall terminate.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal as of the date and year first above written.

McALLISTER BROTHERS INC.

H. Loges

PORT SAN JUAN TOWING CO. CORP.

Brian Dallion

ALL QUESTIONS MUST BE ANSWERED.

This blank to be filled out and handed in at office of the company. All damages however slight must be reported at once. Report must be signed by the captain and by the pilot also if on duty. Captains and pilots will be suspended or discharged for failure to report any damage promptly.

PORT SAN JUAN TOWING CO.

Tug Barbara McAllister Date Sunday 6, 1970  
 Damage occurred on the 6 day of Dec. 1970 at 0015 o'clock A.M.  
 Captain on duty \_\_\_\_\_ Pilot on duty Carlos Cardena  
 Engineer on duty \_\_\_\_\_ Fireman on duty \_\_\_\_\_  
 Deckhands on duty P.J. Padilla  
 Draft Forward Vessel in tow \_\_\_\_\_ Draft Aft Vessel in tow \_\_\_\_\_  
 Bound from \_\_\_\_\_ to \_\_\_\_\_  
 Place and where accident occurred Alongside Entaire Oil Docks  
 Distance from nearest shore \_\_\_\_\_  
 Name of boat damaged \_\_\_\_\_ name of owner \_\_\_\_\_  
 With \_\_\_\_\_ in tow  
 Name of boat doing damage \_\_\_\_\_ name of owner \_\_\_\_\_  
**EXTENT OF DAMAGE**  
**NAME OF VESSELS IN VICINITY**  
 Condition of tide \_\_\_\_\_ Direction and force of wind \_\_\_\_\_  
 State of weather \_\_\_\_\_  
 Radar Operating Yes \_\_\_\_\_ No \_\_\_\_\_  
 Name and addresses of witnesses Carlos Cardena, P.J. Padilla  
Port San Juan Towing Pier 9 San Juan

STATEMENT

Give here full details. If collision, state when boat was first seen, whistles blown by each, bells given, time between bells, bearing of vessels, and if course was changed at any time, lights displayed by each boat, etc., nature of damage and what you did to save the injured boat.

Also give diagram of existing condition at time of accident on reverse side of sheet.

0015 while alongside barge "Triton" discharging in Entaire oil docks, the cook Ernie Williams fell from ladder on top deck of the boat while stepping off the barge Triton. The office was called to send an ambulance. The man fell on his back on the main deck of the boat. An ambulance arrived 0015 Ambulance 302 with injured man and P.J. Padilla to the hospital.

THIS STATEMENT GIVEN TO THE COMPANY ATTORNEY

Captain Alvarez Pilot Carlos Cardena

IM-44  
Rev. 5/72

Exhibit C

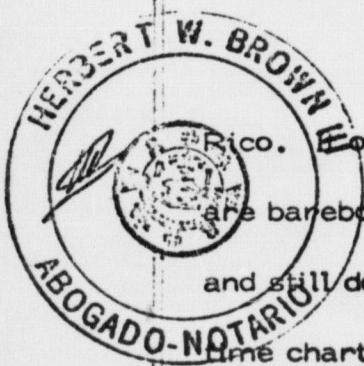
AFFIDAVIT OF  
WILLIAM J. COLEMAN, JR.II

William J. Coleman, Jr., being duly sworn, deposes and says:

1. I am presently Vice President and General Manager of Port San Juan Towing Company (hereinafter, "PSJT").

2. PSJT is a wholly-owned subsidiary of McAllister Brothers, Inc. It is a corporation organized and existing under the laws of the Commonwealth of Puerto Rico. Attached hereto as Exhibit A is a copy of a certificate of good standing of PSJT issued by the Department of State of Puerto Rico on August 24, 1973. As the certificate indicates, PSJT's Certificate of Incorporation was filed on March 3, 1967.

3. I was first employed by PSJT in March of 1970 as Manager of Petroleum Transportation. I became Vice President and General Manager on July 18, 1971. *X J. Coleman*



4. PSJT operates tug boats and barges in and around Puerto Rico. ~~Owns~~ no equipment itself. Most of the vessels operated by PSJT are bareboat-chartered from McAllister Brothers, Inc., but PSJT has, and still does operate vessels belonging to the following companies under time charters, bareboat charters and various management contracts:

Puerto Rico Sun Oil Company; Judge Oil Co.; P.C.I. International, Inc.; Twenty Grand Corp.; Indian Towing Co.; Crescent Towing & Transportation Inc.; Domar, Inc.; Ocean Services Inc.; and others.

Attached as Exhibit B is a copy of the bareboat charter of the tug BARBARA McALLISTER. *when operated*

5. On April 2, 1970, Plaintiff, Emile A. Williams, submitted an Application for Employment to PSJT, a copy of which is attached hereto as Exhibit C.

6. Plaintiff was thereafter employed by PSJT as a cook aboard a tug boat operated by PSJT. Attached hereto as Exhibit D are copies of two PSJT "Wage Vouchers", covering the periods November 15, 1970 to November 30, 1970 and December 1, 1970 to December 15, 1970. Attached as Exhibit E are copies of two PSJT payroll checks made out to Plaintiff.

7. As required by law, PSJT is registered and insured with the Fondo del Seguro del Estado (State Insurance Fund). Plaintiff applied for, and received, benefits from the Fund with respect to the accident alleged to have occurred on December 6, 1970. Attached hereto as Exhibit F is a copy of a statement executed by Plaintiff on December 7, 1970, acknowledging receipt of the form to be submitted to the State Insurance Fund.

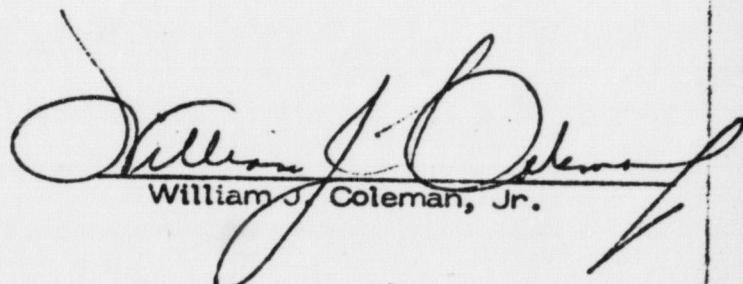
Attached hereto as Exhibits G-1 and G-2 are the application and a translation thereof. The application was executed by Pedro A. Trias, then Accounting and Office Manager.

Attached hereto as Exhibits H-1 and H-2 are a copy of the Decision of the Administrator of the State Insurance Fund, together with a translation, awarding Plaintiff \$810.00 in compensation for injuries allegedly suffered on December 6, 1970.

8. Under the agreement between Plaintiff's Union (Associated Maritime Workers, Local No. 8) and PSJT, additional compensation was paid at the rate of \$45 per week for 36 weeks, or \$1,620.00, for a grand total of \$2,430.00.

40

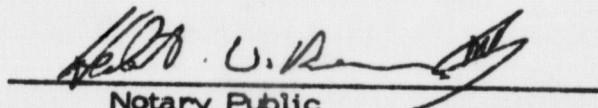
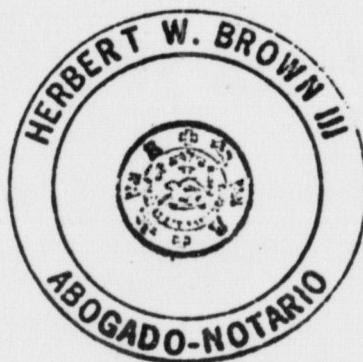
9. I made this affidavit in support of the motion of Defendant PSJT for Summary Judgment, dismissing the complaint filed by Plaintiff Emile Williams, on the grounds that, as a seaman allegedly injured in Puerto Rican waters, while in the employ of a Puerto Rican company which is insured under the State Insurance Fund, Plaintiff is barred from suing his employer, PSJT, under Puerto Rican law.



William J. Coleman, Jr.

Affidavit No. -23-

Sworn and subscribed to before me by William J. Coleman, Jr.,  
of legal age, married, a resident of San Juan, Puerto Rico and Vice  
President and General Manager of Port San Juan Towing Company in  
San Juan, Puerto Rico this 28<sup>th</sup> day of March , 1974.



Notary Public

41

9

COMMONWEALTH OF PUERTO RICO  
DEPARTMENT OF STATE  
SAN JUAN, PUERTO RICO 00904

I, GLORIA I. SILVA DE DIAZ, Assistant Secretary of State of the Commonwealth of Puerto Rico, DO HEREBY CERTIFY: That from the records of this department it appears that PORT SAN JUAN TOWING COMPANY CORP., is a corporation organized under the laws of Puerto Rico on March 3, 1967 at 4:10 P.M., file number 17,487.

AND I FURTHER CERTIFY: That the corporation is in good standing so far as this department is concerned and that the documents on record in this department for above mentioned corporation are:

Certificate of Incorporation-----Filed on March 3, 1967

Corporation reports for the years 1968 through 1972, both inclusive

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the Commonwealth of Puerto Rico, at the City of San Juan, this twenty-fourth day of August, A.D., nineteen hundred and seventy-three.

Gloria I. Silva de Diaz  
Assistant Secretary of State

By: Linda T. Romanian  
Acting Chief Corporation Division



Bareboat Charter Agreement entered into this 1st day of May, 1968 between Port San Juan Towing Company Corporation and McAllister Brothers Inc., on the following terms and conditions:

1. McAllister Brothers Inc., as Owner, agrees to let and Port San Juan Towing Company Corporation, as Charterer, agrees to hire the Tug GLADIATOR on May 1st, 1968, Official Number 207815.
2. The said Vessel shall be delivered to the Charterer, on May 1st, 1968, at a safe wharf or place in the Port of San Juan, Puerto Rico and shall on delivery be in a seaworthy condition and fully equipped.
3. The said Vessel shall be employed by the Charterer in lawful towing service primarily in the Caribbean area, but not outside of the prescribed insurance navigational limits.
4. The Charterer shall at its own expense, crew, victual, fuel and supply the said Vessel and shall pay for all port charges, deck and engine room stores, running expenses and all other costs and charges incidental to the use and operation of the said Vessel.
5. The Charterer shall maintain the Vessel in a thoroughly efficient state in equipment, hull and machinery.
6. This Charter has been arranged for a period of one year, commencing May 1st, 1968 and is renewable thereafter on a year-to-year basis, subject to the right of termination by either party upon giving 30 days' prior notice.
7. The Charter hire shall be at the rate of \$72.33 per day or any part thereof.
8. The Charterer shall at its own expense maintain the existing insurances on the said Vessel and will name the Owner as its interest may appear, against all usual fire and marine risks, including full form of Tower's Liability Insurance. In

the event of a total loss, actual or constructive, the proceeds of such insurance shall be paid to the Owner, but in the event of a partial loss, any monies payable by Underwriters in respect thereto, shall be paid to the Charterer for the purpose of repairing the damage; any losses unpaid by Underwriters by reason of deductible provisions in the policies of insurance, shall be borne by the Charterer.

9. The said Vessel shall be redelivered by the Charterer to a point in Puerto Rico or U. S. East Coast designated by owner, in the same good order and condition (ordinary wear and tear excepted) and on such redelivery, the said Charter shall terminate.

IN WITNESS WHEREOF, the parties hereto have set their hand and seal as of the date and year first above written.

McALLISTER BROTHERS INC.

M. Loges

PORt SAN JUAN TOWING CO. CORP.

Brian Dallin

FOR OFFICE USE ONLY	
Possible Work Locations	Possible Positions

44  
Cook

# APPLICATION FOR EMPLOYMENT

(PLEASE PRINT PLAINLY)

Exhibit C

FOR OFFICE USE ONLY	
Work Location.....	Rate.....
Position.....	Date.....

## PERSONAL

Date: APRIL 2, 1970

Name Williams First EMILE Middle Initial Alphonso Social Security No. 679-9784  
Last

Present address 2490 PASEO AMPARO City LEVITTOWN State NY Zip 11756 Telephone No. 784-1383  
No.  Street

How long have you lived at above address? CATANIA P.R. 00632 Are you a citizen? YES

Previous address EXT. LAS CASAS City SANTURCE P.R. State  Zip  How long did you live there? \_\_\_\_\_  
No.  Street

Date of birth MARCH 3, 1920 Sex: M — F — Height 5-9 1/2 in. Weight 240 lbs.  
Month  Day  Year

Marital Status: Single  Engaged  Married  Separated  Divorced  Widowed  Date of Marriage 1943

Number of dependents including yourself 3 Number of children 1 Their ages 9

Does your wife/husband work? NO If yes, what kind? \_\_\_\_\_ His or her earnings \$ \_\_\_\_\_ per week

Do you own your own home? YES Pay rent? YES Monthly rent (if you rent) 92 — Own a car? NO

Do you have any physical defects? NONE If yes, describe \_\_\_\_\_

Have you had a major illness in the past 5 years? NO If yes, describe \_\_\_\_\_

Have you received compensation for injuries? NO If yes, describe \_\_\_\_\_

Position(s) applied for C.H. COOK AND STEWART Rate of pay expected \$200 per week

Would you work Full-Time YES Part-Time \_\_\_\_\_ Specify days and hours if part time \_\_\_\_\_

Were you previously employed by us? NO If yes, when? \_\_\_\_\_

List any friends or relatives working for us \_\_\_\_\_

Name _____	Relationship _____
------------	--------------------

Name _____	Relationship _____
------------	--------------------

Have you ever been convicted of a crime? NO If yes, describe in full \_\_\_\_\_

If your application is considered favorably, on what date will you be available for work? ANYTIME 19

Person to be notified in case of accident or emergency

Idalia B. Williams Name 2490 PASEO AMPARO Address LEVITTOWN CATANIA P.R. Phone Number 784-1383 00632

Are there any other experiences, skills, or qualifications which you feel would especially fit you for work with the Company? \_\_\_\_\_

The Civil Rights Act of 1964 prohibits discrimination in employment practices because of race, color, religion, sex or national origin.  
PL 90-202 prohibits discrimination because of age.

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Printed in U.S.A.

45  
RECORD EDUCATION

School	Name and Address of School	Course of Study	Years Attended		Check Last Year Completed	Did You Graduate?	List Diploma or Degree
			From	To			
Elementary	ST. CECILIA V.T.				5 6 7 8	<input type="checkbox"/> Yes <input type="checkbox"/> No	
High	BROMHAUGH				1 2 3 4	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
	SAN JUAN P.R.						
College					1 2 3 4	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Other (Specify)					1 2 3 4	<input type="checkbox"/> Yes <input type="checkbox"/> No	

**MILITARY SERVICE RECORD**

What is your present Selective Service classification? VETERAN

Were you in U.S. Armed Forces? Yes  No  If yes, what Branch? NAVY

Dates of duty: From NOV. 2, 1943 To OCT. 29, 1945 Rank at discharge CPOCK 2ND CLASS  
 Month Day Year      Month Day Year

List duties in the service including special training ARMY RESERVE AT BUCHANAN  
Food Service School in 1954

Have you taken any training under the G.I. Bill of Rights? YES If yes, what training did you take? Finish  
High School

**PERSONAL REFERENCES** (Not Former Employers or Relatives)

Name and Occupation	Address	Phone Number
ARMY TRANSPORT SERVICE	ALMEY TERMINAL	
Red Rooster Rest. Officer	CARIBBEAN HILTON AREA	
ARMY Reserve Beach Club	PONCE DE LION AVE	

List below all present and past employment, beginning with your most recent

Name and Address of Company and Type of Business	From		To		Describe in detail the work you did	Weekly Starting Salary	Weekly Last Salary	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.					
I N.M.C.	7	64	JUN	70	CHIEF COOK	UNION RATE	UNION RATE	SHIPPING SHOWS	CLIEF STEWARD

Name and Address of Company and Type of Business	From		To		Describe in detail the work you did	Weekly Starting Salary	Weekly Last Salary	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.					
ARMY TRANSPORT	OCT	46	JAN	50	CHIEF COOK	TRANS PORT	WAGES AS PERM	TERMINATION OF SERVICE	PORT STEWARD
ARMY TERMINAL					AND STEWARD	WAGE			

Name and Address of Company and Type of Business	From		To		Describe in detail the work you did	Weekly Starting Salary	Weekly Last Salary	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.					
Red Rooster	MAY	56	AUG	63				TO RETURN AT SEA	BOYCO
AT. caribe HILTON									

Name and Address of Company and Type of Business	From		To		Describe in detail the work you did	Weekly Starting Salary	Weekly Last Salary	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.					
ARMY RESERVE	JAN								CPT.
officer BEACH		55	DEC		chief COOK	90	110	TO GO AT RED ROOSTER	CRUCO
CL ud				56					

Name and Address of Company and Type of Business	From		To		Describe in detail the work you did	Weekly Starting Salary	Weekly Last Salary	Reason for Leaving	Name of Supervisor
	Mo.	Yr.	Mo.	Yr.					
	JAN	51	DEC	56	chief COOK				

Have you ever been bonded? NO. If yes, on what jobs?

May we contact the employers listed above? YES. If not, indicate by No. which one(s) you do not wish us to contact

The facts set forth above in my application for employment are true and complete. I understand that if employed, false statements on this application shall be considered sufficient cause for dismissal.

Emile R. Williams

ONLY COPY AVAILABLE

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Exhibit D

PORT SAN JUAN TOWING COMPANY  
SUBSIDIARY OF  
MC ALLISTER BROTHERS, INC.

-WAGE VOUCHER-

NAME: ENRIQUE A. VILLANUEVA

Period  
Ending: 11-30-70

REG. DAYS	at \$	= \$
SEA TIME DAYS	at \$ <u>17 20</u>	= \$ <u>141 60</u>
OVERTIME HARBOR	at \$	= \$
SEATIME OVERTIME	at \$ <u>4 59</u>	= \$ <u>169 83</u>
ACCRUED TIME	at \$ <u>17 20</u>	= \$ <u>70 80</u>
OTHER (Specify)	at \$	= \$
TOTAL GROSS:		<u>\$ 382 23</u>

LESS:

SOC. SEC.	\$ <u>18 35</u>
INCOME TAX	<u>24 20</u>
DISABILITY	<u>1.50</u>

WITHDRAWALS

PAYROLL ADVANCES	
U. S. SAVINGS BOND	
UNION DUES	
OTHER	
INSURANCE	

Total Deductions:

44.05

PLUS: Non taxable items:

TOTAL NET PAY:

\$ 338 18

NOTES:

Paid Check # 2193

Date 12/1/70

Prepared by:

Employee:

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48

Exhibit D

PORT SAN JUAN TOWING COMPANY  
SUBSIDIARY OF  
MC ALLISTER BROTHERS, INC.

-WAGE VOUCHER-

NAME: Eric Williams Period Ending: 12-15-70

REG. DAYS	at	\$	=	\$
SEA TIME DAYS	5	17 20	=	85 00
OVERTIME HARBOR	at	\$	=	\$
SEATIME OVERTIME	13	4 17	=	59 67
ACCRUED TIME	2 1/2	17 00	=	44 25
OTHER (Specify)	at	\$	=	\$
TOTAL GROSS:				<u>192 82</u>

LESS:

SOC. SEC.

9.24  
1.72  
.96

INCOME TAX  
DISABILITY

WITHDRAWALS

PAYROLL ADVANCES

\_\_\_\_\_

U. S. SAVINGS BOND

\_\_\_\_\_

UNION DUES

\_\_\_\_\_

OTHER

\_\_\_\_\_

INSURANCE

\_\_\_\_\_

Total Deductions:

12.12

PLUS: Non taxable items:

TOTAL NET PAY:

180 30

NOTES:

Paid Check # 2366

Date 12/19/70

Prepared by:

Employee:

Exhibit E

49

ONLY COPY AVAILABLE

Port San Juan Towing Co Subsidiary of Mc ALISTER BROTHERS, INC. P. O. Box 2898, San Juan, Puerto Rico 00903		No. 2193
PAY TO: EMILE A. WILLIAM	DATE DEC 1 70	Emp. No. Check No. Amount \$338.18 B
THE SUM OF 38.50 DOLLARS AND 18 CENTS		
TO: BANCO POPULAR DE P. R. SAN JUAN, PUERTO RICO	 Authorized Signature	
1021502011	1102630080	000000338.18

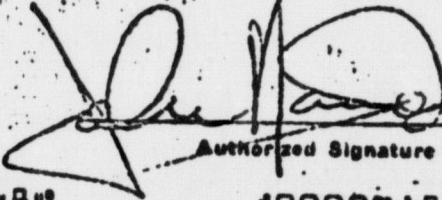
ONLY COPY AVAILABLE

50

REF ID: A9999999999999999999999999999999	*****33800	*****5950
DEC 14 1970	33800 C + R	5950 C + R
GARRIO OBRERO-59	H. A. M.	
	H. A. M.	

Elie A. William

ONLY COPY AVAILABLE

Port San Juan Towing Co Subsidiary of Mc ALLISTER BROTHERS, INC. P. O. Box 2895, San Juan, Puerto Rico 00903		Nº 2366
PAY TO: Emile Williams	DATE Dec. 19, 70	Emp. No. Check Amount
THE SUM OF EIGHT DOLLS AND 30 CTS		
TO: BANCO POPULAR DE P.R. SAN JUAN, PUERTO RICO	 Authorized Signature	
CO 215-02011-16-02630-8	000000 18030	

ONLY COPY AVAILABLE 52

Emile Williams  
B.T. 5950  
Bo. Observ.

DEC 23 1970

222400Z

2052 CT

## Port San Juan Towing Company

*subsidiary of*

Mc ALLISTER BROTHERS, INC.

*Towing and Transportation*

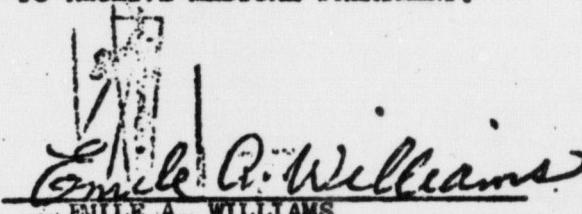
P. O. Box 2895, San Juan, Puerto Rico 00903

Telephone: 724-2360  
Telex: TOWCO 3450469*ONLY COPY AVAILABLE*

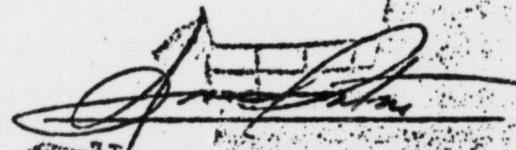
December 7, 1970.

I HEREBY DECLARE THAT I RECEIVED THE CORRESPONDING APPLICATION  
FILLED OUT FOR THE STATE INSURANCE FUND FOR TREATMENT ON ACCIDENT  
OCCURRED ON DECEMBER 6, 1970.

I UNDERSTAND THAT I HAVE TO SUBMIT THIS FORM TO THE STATE  
INSURANCE FUND DISPENSARY TO RECEIVE MEDICAL TREATMENT.

  
Emile A. Williams

EMILE A. WILLIAMS

  
WITNESS - ISAAC SANTANA



## COMMONWEALTH OF PUERTO RICO

Department of Labor

State Insurance Fund

## Occupational Accident Report

Do not write in this space - for office use only

Part A - Employer's Information

1. Name as it appears in the policy: Port San Juan Towing Co.
2. Employer's social security: 66-0267254
3. Telephone no.: 724-2360
4. Policy no.: 85724
5. Mailing address: P.O.Box 2895, San Juan, P.R. 00903
6. Type of business: Towing ships and barges
7. Place of business (street and number, district and town):  
Pier #9, Puerta de Tierra, San Juan, P.R.

Part B - Information on the Injured Party

8. Name of the injured party (paternal and maternal surname):  
Emile A. Williams
9. Social security: 079-24-9784
10. Telephone no.: 784-1383
11. Sex: Male (X)
12. Residential address: Paseo Amparo #2490 C. Urb. Levitt  
Town, Cataño, P.R.
13. Marital Status: /blank/
14. Usual occupation: cook
15. Age: 50 years old
16. How long has he been working for your? 3 months.
17. Indicate how and how much he was paid: \$17.70 per day.
- 19.A. When did the accident occur? Month:12;Day:6;Year:70;Time:12:15am
- B. Time work began on the day of the accident: 5:00 am

-2-

20. Place of accident (site, district, town): Cataño Oil Pipe-line pier      21. Date of work stoppage due to accident:  
Month:12; Day:6; Year: 70.
22. Indicate what work the injured party was doing when the accident took place: He was returning to the tugboat to begin working his shift.      23. Indicate the number of days he worked per week: 7 days.
24. Describe in detail how the accident occurred:  
At 12:15 a.m. on 6/12/70, the cook, Emile A. Williams, fell off the ladder which connects the barge to the tugboat, when he was returning to begin his work as cook aboard the tugboat. This occurred while he was crossing from the barge to the tugboat.
- Vehicle, machine, tool or item causing the injury: ladder (he slipped off same).
25. Witnesses who saw the accident according to the Employer's investigation: Name: Carlos J. Cardena; Address: Calle C-A CK-29 Rexville, Bayamon, P.R.  
Name: Pedro J. Padilla; Address: Urb. Bahia #78, Guanica, P.R.
27. Based on the information obtained, I certify that this report is correct and true: Date: Month: 12; Day: 7; Year: 70  
Town in which parts A and B of the report were filled out: San Juan, P.R. Name and signature of the employer or authorized representative and title: Pedro A. Trias, Accounting & Office Manager  
*/signature/*



Form No.53

## EMPLOYER'S COPY

COMMONWEALTH OF PUERTO RICO

State Insurance Fund

Case number					
Fisc. yr.	Order	Number	Policy number	Code	Group
71	93	02902	85724	7028	290

Name and address: Injured Party -

Emile A. Williams, Paseo Amparo 2490, Urb. Levittown, Cataño, P.R.

Name and address: Employer -

Port San Juan Towing Co., P.O. Box 2895, San Juan, P.R.

## DECISION OF THE ADMINISTRATOR

ON THE OCCUPATIONAL ACCIDENT SUFFERED BY THE INJURED PARTY  
 UNDER THE FOLLOWING CIRCUMSTANCES: PROV. CATANO (16)

(X) Insured

Date of accident: December 6, 1970. Daily wage: \$17.70  
 Days per week: 6 days. Weekly wage: \$45.00. Scene of  
 the accident: Cataño, P.R. Description of the accident:  
 He claims he fell off the ladder which connects the barge  
 to the tugboat. Injury sustained: Bruise with a cut on  
 the fourth finger of the left hand; fracture of the  
 styloid process of the left ulna.

FINAL DISCHARGE. Date: August 13, 1971. Doctor reporting:  
 Dr. Arana Soto - Dr. N. Cardona Aviles. Resulting disa-  
 bility: 10% loss of the use of the wrist of the left hand.

EL MUNDO DE LOS DIAZ, INC.  
A DIVISION OF THE SPANISH LANGUAGE, INC.  
CITY OF SAN JUAN, P.R. TEL. (212) 435-4400

-2-

Having examined the records of this case, the Administrator of the State Insurance Fund resolves that the accident is one of those covered by the Workmen's Compensation Law, #45, passed on April 18, 1935 which was subsequently amended. Having acknowledged the injured party's aforementioned permanent partial disability, the Administrator resolves that the former has the right to receive an additional compensation, as determined by Law, equivalent to 66 2/3 % on the basis of the daily wage he was earning on the day of the accident, not to exceed \$45.00 weekly.

In concurrence with the records of this case, there shall be paid him a compensation not to exceed \$10,000.00 on the basis of the compensation of the weekly wage of \$45.00 for a period of 18 weeks, amounting to \$810.00.

After the aforementioned deductions, if any, are made, the injured party shall receive the amount of: \$810.00

I certify that these presents are true and exact copy of the original. San Juan, P.R. Date: Oct. 4, 1971

/signature/

Administrator of the State Insurance Fund  
Ramon A. Rivera Rivera  
By: /signature/(Official's signature)  
Francisco A. Rodriguez, Assistant Director  
San Juan Region (Title)

Oct. 4, 1971

**60**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x  
EMILE A. WILLIAMS, :  
Plaintiff, :  
-against- :  
McCALLISTER BROS., INC., :  
Defendant. :  
-----x

October 24, 1972  
3:30 p.m.

DEPOSITION of the Defendant, McCALLISTER  
BROS., INC., by GEORGE W. FARRELL, JR., taken by  
the Plaintiff, pursuant to notice dated  
September 26, 1972, held at the office of  
Florrie L. Wertheimer, Esq., 15 Park Row,  
New York, New York, on October 24, 1972, at  
3:30 p.m., before a Notary Public of the  
State of New York.

ADLER REPORTING SERVICE  
STENOTYPE REPORTERS  
15 PARK ROW  
NEW YORK, N.Y. 10036  
CORTLANDT 7-3343  
CORTLANDT 7-3339  
NIGHT PHONE 233-3151

## A p p e a r a n c e s :

PLORPIE L. WERTHEIMER, ESQ.  
Attorney for Plaintiff  
15 Park Row  
Room 503  
New York, New York 10038

HEALY & BAILLIE, ESQS.  
Attorneys for Defendant  
29 Broadway  
New York, New York 10006

BY: BRUCE McALLISTER, ESQ., of Counsel

## A l s o P r e s e n t :

GEORGE W. FARRELL, JR.  
Vice President and Treasurer  
McAllister Bros., Inc.

---

IT IS HEREBY STIPULATED AND AGREED by and  
between the attorneys for the respective parties  
hereto that filing, sealing and certification  
be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to the form of the  
question, shall be reserved to the time of the  
trial.

IT IS FURTHER STIPULATED AND AGREED that the

within examination may be subscribed and sworn to before any Notary Public with the same force and effect as though subscribed and sworn to before this court.

G E O R G E W. F A R R E L L, J.R., having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY MRS. WENTHEIMER:

Q What is your occupation, Mr. Farrell?

A I'm vice president and treasurer of McAllister Bros. and certain other subsidiaries.

Q And, for how long have you been associated with McAllister Bros.?

A Since September, 1969.

Q And, what are your duties?

A The chief finance officer of the corporation.

Q And, where is your office?

A At 17 Battery Place.

Q You're familiar with the name Port San Juan Towing Company?

A Yes, I am.

Q Do you know when Port San Juan Towing Company was formed?

A The exact date, I'm not sure, but I believe it was 1968.

Q Then, at the time that Port San Juan Towing Company was formed you were not with McAllister; is that correct?

A That's right.

Q Where were you employed before?

A I was with Columbia Carbon Company which is now a subsidiary -- well, it became a division of City Service. It was taken over by City Service in 1962.

Q And, that company had nothing to do with McAllister?

A Nothing whatsoever.

Q And, where was Port San Juan Towing Company formed?

A In Port San Juan.

Q Well, do you know if it's a company -- Do you know what I mean by legal composition, such as the difference between a company and a corporation?

A Uh-huh -- yes.

Q Well then tell me, what is the composition of Port San Juan Towing Company?

A Well, to the best of my knowledge, Port San Juan is a subsidiary of McAllister Bros. -- operates in Port San Juan.

Q Can you tell me who -- strike that. Was it formed as a corporation or as a company?

A As a corporation.

Q And, where was the certificate of incorporation filed?

A I'm not sure.

MRS. WERTHEIMER: Can you get that?

MR. McALLISTER: Sure.

Mar 3, 1967 - 71 - Handwritten  
Q And, do you know who are the stockholders  
of Port San Juan?

A McAllister Bros.

Q "McAllister Bros." --  
A Owned the stock of Port San Juan.

Q When you say McAllister Bros. do you mean --  
A McAllister Bros., Incorporated.

Q Does McAllister Bros., Incorporated own

100 percent of the stock of Port San Juan?

A Yes, it does.

Q Has McAllister Bros. always owned 100 percent of the stock of Port San Juan, to your knowledge?

A I'm not sure.

MR. McALLISTER: Off the record.

(Discussion off the record.)

Q Was Port San Juan Towing Company formed by McAllister Bros., Inc. or was it formed by another person or persons or company, and if so, when and who were the stockholders at the time it was formed?

MR. McALLISTER: Okay. I'll fill in all that information.

---

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---

---

Q On December 6, 1970, was McAllister Bros., Inc. the sole stockholder of Port San Juan Towing?

A To my knowledge, yes.

Q Do you know who the officers of Port San Juan Towing are?

A Yes.

Q Who are they?

A Well, let's see, there is Gerard --

MR. McALLISTER: You can refer to your notes.

A (Continuing) Gerard M. McAllister, President, Secretary and Director; Anthony J. McAllister, Vice President and Director; James P. McAllister, Vice President and Director; Broderick H. McAllister, Director; Brian A. McAllister, Executive Vice President; William Coleman, Vice President and General Manager; myself as Treasurer; Pedro Trias, Assistant Director.

MR. McALLISTER: Off the record.

(Discussion off the record.)

MR. McALLISTER: The notes from which Mr. Farrell was consulting include a listing for John Norrod, N-o-r-r-o-d, as vice president. As of the date of the letter which Mr. Farrell consulted, he was vice president. He is no longer with the company. Other than that, the listing there is accurate as of the date of the accident, December, 1970, and is accurate as of

today; is that right, Mr. Farrell?

THE WITNESS: Mr. Coleman wouldn't be at that date.

MR. McALLISTER: That's right, let's see what changes we would have to make in this for December, 1970.

THE WITNESS: I believe John Norrod would be vice president and general manager, and Coleman --

MR. McALLISTER: The only change in this list to make it accurate as of December, 1970 would be that John Norrod would be vice president and general manager, and William Coleman would be with the company in some capacity, but I'm not sure. I'll fill that in.

---

---

Q Do you know who owns the tug BARBARA McALLISTER?

A The McAllister Bros.

Q And, did McAllister Bros. own this tug on December 6, 1970?

A Yes.

Q And, for how long before December 6, 1970 did the McAllister Bros. own the tug BARBARA McALLISTER?

A I do not know the date of acquisition of BARBARA.

Q Do you know if it was several years before?

A Oh, yes, but I do not know the exact date.

Q Where was the tug BARBARA usually --

MRS. WERTHEIMER: Off the record.

(Discussion off the record.)

Q Do you know of your own knowledge where the tug BARBARA was generally operated by McAllister?

A Well, to the best of my knowledge, BARBARA was bare boat chartered to Port San Juan Towing Company.

Q When?

A I do not know the exact date when the charter began.

Q And, do you know for how long the charter was to last?

A No, I don't.

MRS. WERTHEIMER: Well, can you tell me that?

MR. McALLISTER: Right, I'll fill in the

deposition or I'll provide it before the deposition

record comes; when the BARBARA McALLISTER was obtained by the McAllister Bros., when it was chartered to the Port San Juan Towing Company, and the period of the charter.

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MRS. WERTHEIMER: I would also like to know where the BARBARA was generally operated.

MR. McALLISTER: At what time? Within what period?

MRS. WERTHEIMER: Shall we say between -- about a year before or a year after. I don't know if this is 10 years old, 20 years old --

MR. McALLISTER: It's fairly old.

THE WITNESS: Fairly old.

MR. McALLISTER: Off the record.

(Discussion off the record.)

MR. McALLISTER: I'll supply when the charter began and what the period was, and that should answer your question; but I'll also supply the information as to where the

BARBARA was operating one year prior to the accident to one year after the accident.

---

---

Q Are there regular meetings of the board of directors held of the Port San Juan Towing Company?

A Yes.

Q And, where are these meetings held?

A In Puerto Rico.

Q How often?

A I know the regular meeting is the annual meeting, but I don't know how often.

Q And, do all of the directors attend?

A Yes.

Q Have you attended?

A I'm not a director.

Q No, but have you attended?

A No, I have not.

Q Mr. Farrell, is it correct to say that Port San Juan Towing is a subsidiary of McAllister Bros., Inc., is wholly controlled by McAllister Bros.?

A When you say "wholly controlled," wholly controlled within the framework of McAllister's objectives,

but the day-to-day operations are run by the people in Puerto Rico.

Q In other words, these are people hired locally?

A Hired locally or by McAllister, the operation down there.

Q But, the people that are hired are hired by McAllister to run it down there, not from up here?

A Well, let me say this, for example, Mr. Coleman is now running the operation there which was a decree of choice of McAllister personnel, but any hiring that takes place within the framework of his organization are hired locally.

Q Who, Mr. Coleman?

A Yes, Mr. Coleman now is the vice president and general manager.

Q Of McAllister Bros.?

A Yes.

MR. McALLISTER: No, I'm sorry.

MRS. WERTHEIMER: Of Port San Juan.

Q And, where is Mr. Coleman's office?

A In Puerto Rico, and he lives and resides in

Puerto Rico.

Q And, who hired Mr. Coleman?

A Mr. Coleman, to the best of my knowledge, was formally an employee of McAllister Bros.

Q Well, is it correct to state that somebody from McAllister Bros. hired Mr. Coleman to work at Port San Juan?

A Yes.

Q Is it correct to state then that McAllister Bros. operates Port San Juan Towing Company through Mr. Coleman?

A Through Mr. Coleman as an employee of Port San Juan, as general manager and vice president of Port San Juan Towing.

Q And, do you know who supplied the capital with which Port San Juan Towing was operated and continued to be operated after its acquisition or formation?

A McAllister Bros., Inc.

Q And, can you tell me who would have determined whether a tug such as BARBARA, or any other boat, would be chartered to Port San Juan Towing?

A That would depend upon the needs in Port San Juan of a certain vessel; and, they would have recourse to McAllister Bros. from bare boat charter to fill their needs in Puerto Rico.

MRS. WERTHEIMER: I have no further questions.

EXAMINATION BY MR. McALLISTER:

Q Bill Coleman is an employee of what company?  
A He is an employee of Port San Juan.

Q Who, if you know, makes the day-to-day decisions with respect to the dispatching of the tugs in Port San Juan?

A Bill Coleman.

Q Does he make those day-to-day decisions as with -- independently or does he also consult with respect to every decision with the board of directors of McAllister Bros.?

A Oh, it would be impossible for him not to be able to operate completely independently. It is a day-to-day decision that has to be made by him.

Q When a tug such as the BARBARA McALLISTER is under charter to Port San Juan Towing Company who

mans the tugboat; that is, who employs the crew?

A The personnel head of Port San Juan; namely, Coleman.

Q And, the crew are employees of what company then?

A Of Port San Juan.

Q What company supplies and maintains the tugs?

A Port San Juan supplies them -- all repair work, maintenance, and so forth are done at Port San Juan, it being a bare boat charter.

MR. McALLISTER: Okay.

MRS. WERTHEIMER: One other question which I don't know again whether he can answer.

MR. McALLISTER: If not, I can produce the guy that can.

MRS. WERTHEIMER: All right, or you can produce the answer.

BY MRS. WERTHEIMER:

Q The personnel who were hired to man these tugs, are they hired on a permanent basis?

A Oh, I don't know the answer to that. I think

what you are getting at is are they hired through  
a union hall as opposed to going --

Q Yes.

A I don't know.

MR. McALLISTER: Off the record.

(Discussion off the record.)

MR. McALLISTER: Let me get you some  
details about that.

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Q Do you know how many tugs were operated  
by Port San Juan in December of 1970?

A At that time?

Q Yes.

A No, I don't.

MR. McALLISTER: I'll find that out.

---

Q Would that amount vary from month to month?

A I believe there are periods when sometimes it  
is higher according to our needs and again chartering  
from outside sources -- we have lost a lot of contracts

down there, and then, of course, the needs for boats have slackened off.

Q You testified that Mr. Coleman made all the day-to-day decisions insofar as running Port San Juan was concerned, but is it correct to state that if there was a major decision, that he would have to consult with McAllister?

MRS. McALLISTER: Can I object to the form.

Can you give me an example?

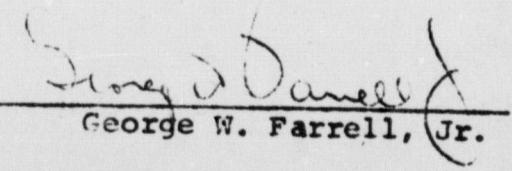
Q Well, for chartering a few tugs or doing something that required an extreme expenditure of money, something that didn't come up in the everyday course of business, is it true that he would have to consult with somebody from McAllister?

✓ A Well, he has to work within the framework and the policy of McAllister. He would have to adhere to the policy of McAllister Bros. If he stays within that framework, the guidelines, if you will, set forth by McAllister, he then can do any day-to-day operating decisions as fits the needs of the business. X

MRS. WERTHEIMER: That's all.

AUDREY M. MALONE  
Notary Public, State of New York Subscribed and sworn to  
No. 24-750338  
Qualified in Kings County  
Certificate filed in New York County before me this 16 day  
Commission Expires March 30, 19

of November, 1972. 1975

  
George W. Farrell, Jr.

77

CERTIFICATE

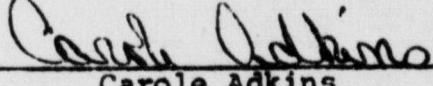
STATE OF NEW YORK )  
                      ) SS:  
COUNTY OF NEW YORK)

I, Carole Adkins, a shorthand reporter and  
Notary Public within and for the State of New York,  
do hereby certify:

That George W. Farrell, Jr., the witness  
whose deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition is a  
true record of the testimony given by such witness.

I further certify that I am not related to any  
of the parties to this action by blood or marriage  
and that I am in no way interested in the outcome  
of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this ninth day of November, 1972.

  
\_\_\_\_\_  
Carole Adkins

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EMILE A. WILLIAMS,

Plaintiff,

AFFIDAVIT

-against-

72 Civ. 4521

McCALLISTER BROTHERS, INC.,

(C.E.S.)

Defendant,

STATE OF NEW YORK )  
: S.S.:  
COUNTY OF NEW YORK)

EMILE A. WILLIAMS, being duly sworn,  
deposes and says:

That I am the plaintiff in the above entitled action, and make this Affidavit in opposition to defendant's motion for an Order pursuant to Rule 56 of the Federal Rules of Civil Procedure dismissing the Complaint herein.

That this action was brought to recover damages for personal injuries sustained while your deponent was employed as a cook on board the Tug "BARBARA McALLISTER" on December 6, 1970.

That this action was brought pursuant to the Jones Act and General Maritime Law, and alleged negligence on the part of the defendant and unseaworthiness of its vessel, by reason of which your deponent sustained a fracture of the Styloid Process of the Left Ulna and fracture of the left orbit, resulting in his being not fit for duty for a period of approximately nine (9) months and a ten (10) percent disability of the left hand.

The gravamen of defendant's motion appears to be that the defendant was not my employer but rather the Port San Juan Towing Company.

The defendant in support of this contention has attempted to raise a "smoke screen" to becloud the true facts, a portion of which shall be herein after set forth, and in the Affirmation of my attorney, F. L. WERTHEIMER. The facts set forth in Mrs. Wertheimer's affirmation have been elicited by her as an attorney, and have been made known to me, and it is respectfully requested that they likewise be considered to be set forth herein as if incorporated by reference.

I am a merchant seaman duly documented as an unlicensed seaman since 1945. I am presently employed on board the "SEA DRIFT" which is a vessel owned and operated by Marine Transport Company. I have been sailing on American flag vessels since 1947, and have been a member of the National Maritime Union since 1947. I have resided intermittently in Puerto Rico, the territorial United States, and in New York City. I have always sailed on American Flag vessels. Among the various United States Flag companies for which I have worked are United States Line, Marine Transport Lines, Transamerican Trailer Transport Inc., Mathiasen's Tanker Industries, Inc., Keystone Shipping Company, and American Trading Company. I have always been hired out of the National Maritime Union halls and understood that my employment as an American seaman on American flag vessels entitled me to the protection of the Jones Act.

The circumstances under which I became employed on board the "BARBARA McALLISTER" were thoroughly consistent with the foregoing insofar as I was hired out of the National Maritime Union hall in San Juan, Puerto Rico.

30

As was the usual practice, I was informed by the dispatcher at the Union Hall that a job was available on the "BARBARA McALLISTER", and went to see a gentlemen by the name of Simpson. The application for employment which is annexed to defendant's moving papers as exhibit "c" carries no printed matter on it other than the standard questions and gives no indication that I was to be hired by Port San Juan Towing rather than McAllister Brothers. It was the understanding of myself as well as my fellow seamen that all of the McAllister tugs were owned, operated and controlled entirely by McAllister Brothers. I respectfully call the Court's attention to the fact that the Application for Employment not only gives no indication of any Company name, but rather if it were to be closely scrutinized, it should certainly indicate that I would be afforded all the rights of an American seaman since the form itself is printed in the United States of America and clearly refers to the Civil Rights Act of 1964. It is respectfully submitted that I should certainly enjoy the protection of the Jones Act if I were being offered the "umbrella" of the Civil Rights Act.

Insofar as the wage voucher and checks are noted in exhibit's "d and e" are concerned, I respectfully call the Court's attention to the fact that both of these items clearly state "Subsidiary of McAllister Brothers". I have always understood that I was employed by McAllister Brothers and that the appearance of the name Port San Juan Towing meant nothing more than a mere convenience for the company which could not affect my rights as an American seaman in any way whatsoever. I have even taken the trouble of looking up the meaning of the word "Subsidiary" in

in Webster's New Collegiate Dictionary and respectfully wish to note that a "Subsidiary" is:

"A company controlled by another company which owns at least a majority of its shares".

To me as a mere layman, this clearly means that I was employed by McAllister Brothers and that "a rose by any other name" as they would choose to call it, is still McAllister Brothers.

Defendant also refers to an "Application to the State Insurance Fund" purportedly signed by me. Here again is a deliberate attempt to misconstrue the true facts. I acknowledged receipt of a form which is annexed as exhibit "g (1) and (2)". This application defendant admits was executed by Pedro A. Trias, a representative of Port San Juan Towing on December 7, 1970. December 7, 1970 I did indeed sign exhibit "f" which merely states that I received the corresponding application filled out for the State Insurance Fund... Both of these exhibits are typewritten and I had nothing whatsoever to do with the preparation of either. I respectfully call the Court's attention to the fact that my accident in which I was severely injured occurred on December 6, 1970 and that the paper dated December 7, 1970 marked exhibit "f" which I signed was brought to me in the hospital to be signed at a time when I was in severe pain, highly sedated, medicated, and in no way cognizant of what I was actually signing.

As an American seaman for upwards of twenty-five (25) years, I was most assuredly aware that a seaman who becomes ill or injured is entitled to receive \$8.00 a day from the company which represents maintenance and cure. Defendant's moving papers state that I have

received a total of \$2,430.00. However, there are no cancelled checks annexed to support that amount. It is my recollection that I received a total of \$1,620.00 which represents payments for maintenance and cure at the rate of \$8.00 per day for the period during which I was not fit for duty, that is, from the date of the accident, less my hospital time, until August 13, 1971. The fact that the checks may have come from the Fondo del Seguro was of no significance to me whatsoever since I merely assumed that was the name of McAllister's insurance company. To me, it was merely a routine manner in which McAllister was paying me my maintenance due.

The affidavit of William J. Coleman, Jr., II refers to an "agreement between plaintiff's union" and mentions the Associated Maritime Workers, Local No. 8. I unequivocally state that I was never a member of that union at any time whatsoever nor have I ever signed any paper whatsoever acknowledging myself to be a party to any agreement between that union and myself or any representative of the defendant.

It was my understanding from the first time that I was advised out of the union hall about the job on board the Tug BARBARA McALLISTER that I would be employed by McAllister Brothers Inc., and by no one else. Most assuredly I would never have taken a job where I would not be afforded my rights and protection which I carry with my seaman's papers as an American seaman under an American Flag Vessel.

s/Emile A. Williams

EMILE A. WILLIAMS

No.

Sworn to before me this  
28th day of May, 1974.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----  
EMILE A. WILLIAMS,

Plaintiff,

AFFIDAVIT

-against-

72 Civ. 4521

McALLISTER BROTHERS, INC.,

(C.E.S.)

Defendant,  
-----STATE OF NEW YORK )  
: S.S.:  
COUNTY OF NEW YORK)

F. L. WERTHEIMER, being duly sworn, deposes  
and says:

That she is the attorney for the plaintiff  
herein, and makes this Affidavit in opposition to defendants  
Motion for an Order pursuant to Rule 56 of the Federal Rules  
of Civil Procedure dismissing the Complaint herein.

That this action was brought by plaintiff,  
an American Merchant Seaman against defendant, McAllister  
Brothers, Inc., for damages for personal injuries sustained  
on December 6, 1970 while employed as a cook on board the  
tug "BARBARA McALLISTER".

The accident occurred when plaintiff was  
caused to fall from a ladder on the tug. It is defendants  
contention that plaintiff was employed by Port San Juan  
Towing Company which is admittedly a subsidiary of the  
defendant, McAllister Brothers Inc., Defendant claims that  
the laws of Puerto Rico would therefore apply insofar as

plaintiff's accident is concerned and plaintiff could not sue his employer pursuant to the Jones Act and General Maritime Law, but would rather be relegated to the minuscule relief afforded him by the Puerto Rico Workmen's Compensation.

It is undisputed that the tug BARBARA McALLISTER on which plaintiff was employed was owned by defendant. However, defendant claims that it had bare-boat chartered the tug to Port San Juan Towing Company, and hence divested itself of responsibility as well as control.

Deponent respectfully refers this Court to the deposition dated October 24, 1972 of George W. Farrell, Jr., and the supplementary statement which are annexed hereto and marked exhibit I. Mr. Farrell was deposed by deponent in response to a notice dated September 26, 1972, a copy of which is annexed hereto and marked exhibit II. Deponent refers to page 5 thereof and the response to the question regarding the stock ownership of Port San Juan Towing Company. Mr. Farrell responds that 100% of the stock is owned by McAllister Brothers Inc.

On page 7 of the deposition in response to the question as to who are the officers of Port San Juan Towing Company, Mr. Farrell answers:

Gerard M. McAllister, President, Secretary and Director  
Anthony J. McAllister, Vice President and Director  
James P. McAllister, Vice President and Director  
Broderick H. McAllister, Director  
Brian A. McAllister, Executive Vice President  
William Coleman, Vice President and General Manager  
George W. Farrell, Treasurer  
Pedro Trias, Assistant Director

It is overwhelmingly apparent that McAllister Brothers Inc., not only fills all of the key offices with "McAllisters", but likewise predominates the Board of Directors.

Annexed hereto and marked exhibit III, is a copy of a letter dated July 16, 1971 written on the letterhead of Port San Juan Towing Company, Subsidiary of McAllister Brothers Inc. It is to be noted that this letterhead carries the address of 17 Battery Place, New York, New York 10004, and carries the telephone number as listed in the Manhattan Telephone Directory of McAllister Brothers Inc., for Port San Juan Towing Company.

On page 8 of the deposition and in response to the ownership of the tug BARBARA McALLISTER, Mr. Farrell states that McAllister Brothers Inc., owned this tug on the date of the accident.

In response to deponent's question on page 10 of the deposition as to the ownership of the tug BARBARA McALLISTER, it is stated that the tug was bought in April of 1968. Annexed hereto and marked exhibit IV is a copy of the Certificate of Ownership of the vessel BARBARA McALLISTER from the United States Coast Guard showing the ownership of this tug to be McAllister Brothers Inc., a corporation organized and existing under and by virtue of the laws of the State of New York, of 17 Battery Place, New York, New York. It further notes the Mortgagor of the vessel to be Marine Midland Bank of New York.

Annexed hereto and marked exhibit V is a copy of the Temporary Certificate of Registry of the United States Coast Guard for the tug BARBARA McALLISTER showing the tug to have been registered on January 14, 1969 in San Juan, Puerto Rico. The Temporary Certificate shows

one Emil F. Benja of Englewood Cliff, New Jersey to be the authorized agent and one Robert H. Ness, a citizen of the United States, as the Master. It is also to be noted that this exhibit has stamped on it "75 Percent of the interest in the corporation owning this vessel is owned by citizens of the United States. It may engage in the coastwise trade so long as so owned and no longer". This is significant in that it indicates that the stock ownership in excess of 75 percent entitles the vessel to carry domestic cargo to domestic ports pursuant to the applicable Coast Guard Documentation and would indicate that the BARBARA McALLISTER has substantial contacts with United States ports.

On page 11 of the deposition of Mr. Farrell, he is asked about the control of Port San Juan Towing Company by McAllister Brothers Inc., and replies "when you say 'wholly controlled', within the framework of McAllister's objectives,..."

Deponent refers the Court to exhibit B annexed to defendants moving affidavit which is the bare-boat charter agreement. It is to be noted that the agreement is signed on behalf of Port San Juan Towing Company by Brian A. McAllister.

On Page 1<sup>1/2</sup> of Mr. Farrell's deposition, he clearly refers to the fact that Port San Juan Towing Company must look to McAllister Brothers Inc., for its vessels. It is clear from Mr. Farrell's deposition that control over Port San Juan Towing Company is clearly vested in McAllister Brothers Inc., with the exception of the day-to-day ministerial acts concerning the vessels such as repairs and manning.

The answer to a question posed on page 16 with regard to the number of tugs operated by Port San Juan Towing Company in December of 1970 is particularly significant. The supplementary statement states that there were approx-

imately eight (8). Annexed hereto and marked exhibit VI is a copy of an invoice from McAllister Brothers Inc., dated December 30, 1970 for monies due for vessels chartered for the month of December. There are listed six (6) tugs and one (1) barge. All six (6) tugs are McAllister tugs. The pedigree of the barge is not apparent.

The key with regard to control of Port San Juan Towing Company by McAllister Brothers Inc., is again clearly stated on page 17 of the deposition of Mr. Farrell:

"Q. You testified that Mr. Coleman made all the day-to-day decisions insofar as running Port San Juan was concerned, but is it correct to state that if there was a major decision, that he would have to consult with McAllister?"

MR. McALLISTER: Can I object to the form. Can you give me an example?

Q. Well, for chartering a few tugs or doing something that required an extreme expenditure of money, something that didn't come up in the everyday course of business, is it true that he would have to consult with somebody from McAllister?

A. Well, he has to work within the framework and the policy of McAllister. He would have to adhere to the policy of McAllister Bros. If he stays within that framework, the guidelines, if you will, set forth by McAllister, he then can do any day-to-day operating decisions as fits the needs of the business."

Deponent also respectfully refers this Court to the fact that the affidavits for both McAllister Brothers Inc., and Port San Juan Towing Company submitted with defendants moving papers are made by one William J. Coleman by virtue of the fact that he was in a position to act for both companies and would indicate that he as well as Port San Juan Towing Company is under the obvious control of McAllister Brothers Inc. Mr. Coleman in fact was to have been a witness in a case wherein the same legal question and fact pattern involved as in the instant case, was admittedly

on more than one occasion found by defendants own counsel at McAllister Brothers Inc.'s own offices in New York and was even produced at this Courthouse for a trial of that particular case. Mr. Coleman's affidavit number one refers to Arthur Anderson & Company as Port San Juan Towing Company's own local accountants. Deponent refers the Court to the fact that this accounting company is situated at 1345 Avenue of the Americas, New York, New York, and would hazard a guess that this is the same accounting company employed by defendant.

Likewise, the same affidavit acknowledges that "all decisions concerning routine maintenance and repairs" are made by Port San Juan Towing. "Major repairs of course, may require the knowledge and concurrence of the owners of the vessel". Surely this indicates the high degree of control that defendant maintains over the vessels despite the fact that it claims it has divested itself of such control by "bare-boat" chartering. It is particularly significant that there are no facts submitted by the moving affidavits with regard to the accident itself and the condition of the vessel. There are mere conclusory allegations with reference to how the accident happened, which are within the realm of the defendants hypotheses; to wit, the Damage Report referred to in Mr. Coleman's affidavit number one, a copy of which is annexed hereto and marked exhibit VII and the report of Personal Injury, form 924 (e), submitted March 7, 1972 over two years after the accident, a copy of which is annexed hereto and marked exhibit VIII. Neither of these items were prepared or signed by plaintiff. It is significant to note that

exhibit VII states that plaintiff was injured when he "fell from ladder on top deck of the boat while stepping off the barge Triton..." Whereas exhibit VIII states that plaintiff was injured when he "fell from ladder on top deck of the boat, while stepping off to the barge Triton". There has been no examinations before trial or any depositions conducted. There is no sworn testimony, indeed no testimony, as to the true facts. Defendant has set forth no cogent facts in support of the general denials and affirmative defense set out in its answer except its own unsupported conclusory allegations. The complaint alleges negligence as well as unseaworthiness of defendants vessel. It is particularly important to note that if the accident were caused by the unseaworthiness of the vessel, the defendant could not hide behind its purported bare-boat charter. There are serious questions of fact to be resolved with regard to the alleged charter itself, and the degree of control. It is submitted that the purported charter agreement as well as the Port San Juan Towing Company are both puppets used by the defendant, which pulls the strings for each.

Mr. Coleman's affidavit number two refers to an agreement between plaintiff's union and Port San Juan Towing Company. Plaintiff has set forth in his affidavit that he is a member of the National Maritime Union, and has so been for upwards of twenty-five (25) years. There is no agreement whatsoever between plaintiff and Port San Juan Towing Company as suggested by Mr. Coleman that would make plaintiff subject to the Workmen's Compensation laws of Puerto Rico. As plaintiff has already stated, he was hired out of the National Maritime Union Hall and in no way was made aware that he was to sacrifice his rights as

an American Seaman by working on board the BARBARA McALLISTER.

Deponent respectfully refers this Court to portions of the depositions of Mr. Victor Manuel Martinez and Mr. Antonio Obregon which were taken in an action entitled VICTOR MANUEL MARTINEZ against McALLISTER BROTHERS INC., bearing Index Number 72 Civ. 3196 in this Court. Mr. Martinez had been injured while employed on board the tug NEIL McALLISTER in December of 1971. The defendant likewise alleged that the Puerto Rico Workmen's Compensation laws would apply rather than the Jones Act, and further alleging that Mr. Martinez had been employed by Port San Juan Towing Company. On page 2 of Mr. Obregon's deposition, a copy of which is annexed hereto and marked exhibit IX, when questioned as to his employer, Mr. Obregon who is Chief Engineer on the tug NEIL McALLISTER stated it to be McAllister Brothers Inc. Likewise, his testimony on page 35 refers to the trips the tug NEIL McALLISTER made to St. Thomas, St. Croix, South America, Miami and Jacksonville surely indicating sufficient contacts in the United States. A copy of page 35 of Mr. Obregon's deposition is annexed hereto and marked exhibit X. There has been no testimony on the contacts of the BARBARA McALLISTER in the United States with other ports simply because discovery proceedings have not been had. Mr. Martinez on his examination before trial likewise testified that he worked for McAllister Brothers Inc. A copy of pages 6, 7, 8, and 9 of that deposition are annexed hereto and marked exhibit XI. It is to be noted that the BARBARA McALLISTER is also referred to in this deposition, and that the attorneys in that case for defendant are the same as in the instant case.

It is respectfully submitted that there are questions of fact most particularly concerned with the matter of control which cannot be disposed of on the instant motion, but rather must be resolved by means of a trial. Clearly, we have a case in which an American Citizen belonging to an American Union is injured on board an American vessel owned by an American corporation purportedly bare-boat chartered to a wholly owned subsidiary over which it exerts 100 percent control; the vessel operates in American waters, touches on American ports, is registered with the United States Coast Guard and is mortgaged to American Banks. Under the circumstances and the facts which would be adduced at a trial, defendant should be held to respond in damages for plaintiff's injuries pursuant to the law of the American Flag, that is the Jones Act and General Maritime Law.

In view of the foregoing, it is respectfully submitted that the defendants motion should in all respects be denied.

*S/L Wertheimer*

P. L. WERTHEIMER

N

Sworn to before me this  
11th day of June, 1974.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x  
EMILE A. WILLIAMS, :  
Plaintiff, :  
-against- :  
McALLISTER BROS., INC., :  
Defendant. :  
-----x

October 24, 1972  
3:30 p.m.

DEPOSITION of the Defendant, McALLISTER  
BROS., INC., by GEORGE W. FARRELL, JR., taken by  
the Plaintiff, pursuant to notice dated  
September 26, 1972, held at the office of  
Florrie L. Wertheimer, Esq., 15 Park Row,  
New York, New York, on October 24, 1972, at  
3:30 p.m., before a Notary Public of the  
State of New York.

ADLER REPORTING SERVICE  
STENOTYPE REPORTERS  
15 PARK ROW  
NEW YORK, N.Y. 10006  
CORTLANDT 7-3343  
CORTLANDT 7-3339  
EIGHT FIVE ONE 233-3151

## A p p e a r a n c e s :

FLORRIE L. WEFTHEIMER, ESQ.  
Attorney for Plaintiff  
15 Park Row  
Room 503  
New York, New York 10038

HFAILY & BAILLIE, ESQS.  
Attorneys for Defendant  
29 Broadway  
New York, New York 10006

BY: BRUCE McALLISTER, ESQ., of Counsel

## A l s o P r e s e n t :

GEO. GE V. FARRELL, JR.  
Vice President and Treasurer  
McAllister Bros., Inc.

- - -

IT IS HEREBY STIPULATED AND AGREED by and  
between the attorneys for the respective parties  
hereto that filing, sealing and certification  
be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to the form of the  
question, shall be reserved to the time of the  
trial.

IT IS FURTHER STIPULATED AND AGREED that the

within examination may be subscribed and sworn to before any Notary Public with the same force and effect as though subscribed and sworn to before this court.

- - -

G E O R G E W. F A R R E L L, J R., having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY MRS. WERTHEIMER:

Q What is your occupation, Mr. Farrell?

A I'm vice president and treasurer of McAllister Bros. and certain other subsidiaries.

Q And, for how long have you been associated with McAllister Bros.?

A Since September, 1969.

Q And, what are your duties?

A The chief finance officer of the corporation.

Q And, where is your office?

A At 17 Battery Place.

Q You're familiar with the name Port San Juan Towing Company?

A Yes, I am.

Q Do you know when Port San Juan Towing Company was formed?

A The exact date, I'm not sure, but I believe it was 1968.

Q The, at the time that Port San Juan Towing Company was formed you were not with McAllister; is that correct?

A That's right.

Q Where were you employed before?

A I was with Columbia Carbon Company which is now a subsidiary -- well, it became a division of City Service. It was taken over by City Service in 1962.

Q And, that company had nothing to do with McAllister?

A Nothing whatsoever.

Q And, where was Port San Juan Towing Company formed?

A In Port San Juan.

Q Well, do you know if it's a company -- Do you know what I mean by legal composition, such as the difference between a company and a corporation?

A Uh-huh -- yes.

Q Well then tell me, what is the composition of Port San Juan Towing Company?

A Well, to the best of my knowledge, Port San Juan is a subsidiary of McAllister Bros. -- operates in Port San Juan.

Q Can you tell me who -- strike that. Was it formed as a corporation or as a company?

A As a corporation.

Q And, where was the certificate of incorporation filed?

A I'm not sure.

MRS. WERTHEIMER: Can you get that?

MR. McALLISTER: Sure.

---

Q And, do you know who are the stockholders of Port San Juan?

A McAllister Bros.

Q "McAllister Bros."--

A Owned the stock of Port San Juan.

Q When you say McAllister Bros. do you mean --

A McAllister Bros., Incorporated.

Q Does McAllister Bros., Incorporated own

100 percent of the stock of Port San Juan?

A Yes, it does.

Q Has McAllister Bros. always owned 100 percent of the stock of Port San Juan, to your knowledge?

A I'm not sure.

MR. MCALLISTER: Off the record.

(Discussion off the record.)

Q Was Port San Juan Towing Company formed by McAllister Bros., Inc. or was it formed by another person or persons or company, and if so, when and who were the stockholders at the time it was formed?

MR. MCALLISTER: Okay. I'll fill in all that information.

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Q On December 6, 1970, was McAllister Bros., Inc. the sole stockholder of Port San Juan Towing?

A To my knowledge, yes.

Q Do you know who the officers of Port San Juan Towing are?

A Yes.

Q Who are they?

A Well, let's see, there is Gerard --

MR. McALLISTER: You can refer to your notes.

A (Continuing) Gerard M. McAllister, President, Secretary and Director; Anthony J. McAllister, Vice President and Director; James P. McAllister, Vice President and Director; Broderick H. McAllister, Director, Brian A. McAllister, Executive Vice President; William Coleman, Vice President and General Manager; myself as Treasurer; Pedro Trias, Assistant Director.

MR. McALLISTER: Off the record.

(Discussion off the record.)

MR. McALLISTER: The notes from which Mr. Farrell was consulting include a listing for John Norrod, N-o-r-r-o-d, as vice president. As of the date of the letter which Mr. Farrell consulted, he was vice president. He is no longer with the company. Other than that, the listing there is accurate as of the date of the accident, December, 1970, and is accurate as of

G. Farrell

8

today; is that right, Mr. Farrell?

THE WITNESS: Mr. Coleman wouldn't be at that date.

MR. McALLISTER: That's right, let's see what changes we would have to make in this for December, 1970.

THE WITNESS: I believe John Norrod would be vice president and general manager, and Coleman --

MR. McALLISTER: The only change in this list to make it accurate as of December, 1970 would be that John Norrod would be vice president and general manager, and William Coleman would be with the company in some capacity, but I'm not sure. I'll fill that in.

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Q Do you know who owns the tug BARBARA  
McALLISTER?

A The McAllister Bros.

Q And, did McAllister Bros. own this tug on December 6, 1970?

A Yes.

100  
G. Farrell

Q And, for how long before December 6, 1970 did the McAllister Bros. own the tug BARBARA McALLISTER?

A I do not know the date of acquisition of BARBARA.

Q Do you know if it was several years before?

A Oh, yes, but I do not know the exact date.

Q Where was the tug BARBARA usually --

MRS. WERTHEIMER: Off the record.

(Discussion off the record.)

Q Do you know of your own knowledge where the tug BARBARA was generally operated by McAllister?

A Well, to the best of my knowledge, BARBARA was bare boat chartered to Port San Juan Towing Company.

Q When?

A I do not know the exact date when the charter began.

Q And, do you know for how long the charter was to last?

A No, I don't.

MRS. WERTHEIMER: Well, can you tell me that?

MR. McALLISTER: Right, I'll fill in the

deposition or I'll provide it before the deposition

record comes; when the BARBARA McALLISTER was obtained by the McAllister Bros., when it was chartered to the Port San Juan Towing Company, and the period of the charter.

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MRS. WERTHEIMER: I would also like to know where the BARBARA was generally operated.

MR. McALLISTER: At what time? Within what period?

MRS. WERTHEIMER: Shall we say between -- about a year before or a year after. I don't know if this is 10 years old, 20 years old --

MR. McALLISTER: It's fairly old.

THE WITNESS: Fairly old.

MR. McALLISTER: Off the record.

(Discussion off the record.)

MR. McALLISTER: I'll supply when the charter began and what the period was, and that should answer your question; but I'll also supply the information as to where the

BARBARA was operating one year prior to the accident to one year after the accident.

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Q Are there regular meetings of the board of directors held of the Port San Juan Towing Company?

A Yes.

Q And, where are these meetings held?

A In Puerto Rico.

Q How often?

A I know the regular meeting is the annual meeting, but I don't know how often.

Q And, do all of the directors attend?

A Yes.

Q Have you attended?

A I'm not a director.

Q No, but have you attended?

A No, I have not.

Q Mr. Farrell, is it correct to say that Port San Juan Towing is a subsidiary of McAllister Bros., Inc., is wholly controlled by McAllister Bros.?

A When you say "wholly controlled," wholly controlled within the framework of McAllister's objectives.

but the day-to-day operations are run by the people in Puerto Rico.

Q In other words, these are people hired locally?

A Hired locally or by McAllister, the operation down there.

Q But, the people that are hired are hired by McAllister to run it down there, not from up here?

A Well, let me say this, for example, Mr. Coleman is now running the operation there which was a decree of choice of McAllister personnel, but any hiring that takes place within the framework of his organization are hired locally.

Q Who, Mr. Coleman?

A Yes, Mr. Coleman now is the vice president and general manager.

Q Of McAllister Bros.?

A Yes.

MR. McALLISTER: No, I'm sorry.

MRS. WERTHEIMER: Of Port San Juan.

Q And where is Mr. Coleman's office?

A In Puerto Rico, and he lives and resides in

Puerto Rico.

Q And, who hired Mr. Coleman?

A Mr. Coleman, to the best of my knowledge, was formally an employee of McAllister Bros.

Q Well, is it correct to state that somebody from McAllister Bros. hired Mr. Coleman to work at Port San Juan?

A Yes.

Q Is it correct to state then that McAllister Bros. operates Port San Juan Towing Company through Mr. Coleman?

A Through Mr. Coleman as an employee of Port San Juan, as general manager and vice president of Port San Juan Towing.

Q And, do you know who supplied the capital with which Port San Juan Towing was operated and continued to be operated after its acquisition or formation?

A McAllister Bros., Inc.

Q And, can you tell me who would have determined whether a tug such as BARBARA, or any other boat, would be chartered to Port San Juan Towing?

A That would depend upon the needs in Port San Juan of a certain vessel; and, they would have recourse to McAllister Bros. from bare boat charter to fill their needs in Puerto Rico.

MRS. WERTHEIMER: I have no further questions.

EXAMINATION BY MR. McALLISTER:

Q Bill Coleman is an employee of what company?  
A He is an employee of Port San Juan.

Q Who, if you know, makes the day-to-day decisions with respect to the dispatching of the tugs in Port San Juan?

A Bill Coleman.

Q Does he make those day-to-day decisions as with -- independently or does he also consult with respect to every decision with the board of directors of McAllister Bros.?

A Oh, it would be impossible for him not to be able to operate completely independently. It is a day-to-day decision that has to be made by him.

Q When a tug such as the BARBARA McALLISTER is under charter to Port San Juan Towing Company who

owns the tugboat; that is, who employs the crew?

A The personnel head of Port San Juan; namely, Coleman.

Q And, the crew are employees of what company then?

A Of Port San Juan.

Q What company supplies and maintains the tugs?

A Port San Juan supplies them -- all repair work, maintenance, and so forth are done at Port San Juan, it being a bare boat charter.

MR. McALLISTER: Okay.

MRS. WERTHEIMER: One other question which I don't know again whether he can answer.

MR. McALLISTER: If not, I can produce the guy that can.

MRS. WERTHEIMER: All right, or you can produce the answer.

BY MRS. WERTHEIMER:

Q The personnel who were hired to man these tugs, are they hired on a permanent basis?

A Oh, I don't know the answer to that. I think

what you are getting at is are they hired through  
a union hall as opposed to going --

Q Yes.

A I don't know.

MR. McALLISTER: Off the record.

(Discussion off the record.)

MR. McALLISTER: Let me get you some  
details about that.

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Q Do you know how many tugs were operated  
by Port San Juan in December of 1970?

A At that time?

Q Yes.

A No, I don't.

MR. McALLISTER: I'll find that out.

---

Q Would that amount vary from month to month?

A I believe there are periods when sometimes it  
is higher according to our needs and again chartering  
from outside sources -- we have lost a lot of contracts

down there, and then, of course, the needs for boats have slackened off.

X Q You testified that Mr. Coleman made all the day-to-day decisions insofar as running Port San Juan was concerned, but is it correct to state that if there was a major decision, that he would have to consult with McAllister?

MR. MCALLISTER: Can I object to the form.

Can you give me an example?

Q Well, for chartering a few tugs or doing something that required an extreme expenditure of money, something that didn't come up in the everyday course of business, is it true that he would have to consult with somebody from McAllister?

A Well, he has to work within the framework and the policy of McAllister. He would have to adhere to the policy of McAllister Bros. If he stays within that framework, the guidelines, if you will, set forth by McAllister, he then can do any day-to-day operating decisions as fits the needs of the business.

MRS. WERTHEIMER: That's all.

MALONE  
State of New York Subscribed and sworn to  
#587638  
Kings County  
New York County before me this 16 day  
March 30, 19

of November, 1972. (1975)

George W. Farrell, Jr.

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CERTIFICATE

STATE OF NEW YORK )  
                      ) SS:  
COUNTY OF NEW YORK)

I, Carole Adkins, a shorthand reporter and  
Notary Public within and for the State of New York,  
do hereby certify:

That George W. Farrell, Jr., the witness  
whose deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition is a  
true record of the testimony given by such witness.

I further certify that I am not related to any  
of the parties to this action by blood or marriage  
and that I am in no way interested in the outcome  
of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this ninth day of November, 1972.

  
\_\_\_\_\_  
Carole Adkins

SUPPLEMENTARY STATEMENT

As Attorneys for Defendant, McAllister Brothers Inc., we hereby certify that the following information was given to us by various personnel of McAllister Brothers Inc. in response to our inquiries:

Deposition Page 5

Q. Where was Certificate of Incorporation of Port San Juan (hereinafter, Port San Juan) Towing Company, Inc. filed?

A. San Juan, Puerto Rico.

Deposition Page 6

Q. When was Port San Juan formed and who were its original stockholders?

A. Corporation was formed on March 3, 1967 and its original stockholders were Howard C. Nickerson and Howard C. Nickerson, Jr.

Deposition Page 8

Q. What was status of William Coleman as of December, 1970?

A. Operations manager.

Deposition Page 10

Q. When was TUG BARBARA McALLISTER obtained by McAllister Brothers, when was it chartered to Port San Juan and what is the period of the charter?

A. McAllister Brothers bought the Tug BARBARA McALLISTER in April of 1968 and chartered the Tug to Port San Juan on approximately the same day, and in any event, on or before May 1, 1968. The period of the charter is one year, renewable annually.

- 2 -

Deposition Page 11

Q. Where was Tug BARBARA McALLISTER operating during the year prior to December, 1970

A. In and around Puerto Rico.

Deposition Page 16

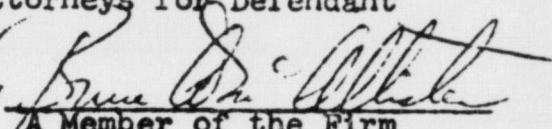
Q. Who are men who make up pool of prospective crew-members, as of December, 1970.

A. Associated Maritime Workers Local No. 8

Q. How many tugboats were operated by Port San Juan in December of 1970.

A. Approximately 8.

HEALY & BAILLIE  
Attorneys for Defendant

By   
A Member of the Firm

Dated: New York, N. Y.  
April 15, 1974

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

112

----- x  
EMILE A. WILLIAMS,

Plaintiff, :

-against- : 71 Civ. 4521

McCALLISTER BROS., INC., : NOTICE OF DEPOSITION

Defendant. :

----- x  
SIRS:

PLEASE TAKE NOTICE, that pursuant to Rule 30 of the Federal Rules of Civil Procedure, the undersigned will take the deposition upon oral examination of the defendant by an officer having knowledge of the facts and the corporate structure, stock ownership, etc., at 2:30 P.M. on the 6th day of October, 1972, before a notary public or some other officer authorized to administer oaths at the offices of the undersigned at 15 Park Row, New York, New York 10038, Room 530.

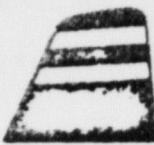
Dated: New York, New York  
September 26, 1972

YOURS, ETC.,

---

F. L. WERTHEIMER  
Attorney for Plaintiff  
15 Park Row  
New York, New York 10038

TO:  
HEALY & BAILLIE  
Attorneys for Defendant  
29 Broadway  
New York, New York 10006



PORT SAN JUAN TOWING COMPANY 113

SUBSIDIARY OF

McALLISTER BROTHERS INC.  
TOWING/TRANSPORTATION

17 BATTERY PLACE, NEW YORK, N.Y. 10004  
TEL. 268-3800 CABLE ADDRESS MACALTOW

July 16, 1971

Nicolas Jimenez, Esq.  
Jimenez & Fuste  
Suite 505, Midtown Building  
421 Munoz Rivera Avenue  
Hato Rey, Puerto Rico 00918

Dear Nick:

This will acknowledge receipt of your letter of June 24, 1971 with enclosures.

We have been remiss in not notifying you that Louis J. Riso left our employ on August 31, 1969 and was replaced as Treasurer by George W. Farrell, Jr. We have, therefore, amended the Minutes of September 15, 1969 and September 15, 1970, accordingly.

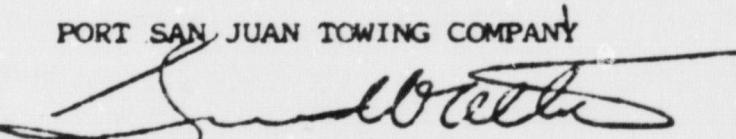
In addition, John Norrod, as of July 1, 1971, was replaced as Vice President and General Manager by William A. Coleman, Jr.

The Directors and Officers of the corporation are currently as follows:

Gerard M. McAllister	President, Secretary and Director
Anthony J. McAllister	- Vice President and Director
James P. McAllister	- Vice President and Director
Roderick H. McAllister	- Director
Brian A. McAllister	- Executive Vice President
William A. Coleman	- Vice President and General Manager
John Norrod	- Vice President
George W. Farrell, Jr.	- Treasurer
Pedro Trias	- Assistant Treasurer

Very truly yours,

PORT SAN JUAN TOWING COMPANY

  
Gerard M. McAllister  
President

GM/r/mo

## CERTIFICATE OF OWNERSHIP OF VESSEL

DEPARTMENT OF TRANSPORTATION  
U. S. COAST GUARD

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Port of New York, N.Y.

DOCUMENTATION OFFICE 25 April 1971

I hereby certify that, according to the records of this office, the oil screw called the BARBARA McALLISTER, of this port, official number 20751, tonnage 113 gross, 77 net, built at Cleveland, Ohio in 1969, and last documented at San Juan, Puerto Rico on 14 January 1969 (T.R. No. 52) is owned as follows:

McALLISTER BROTHERS INC., a corporation organized and existing under and by virtue of the laws of the State of New York, of 17 Battery Place, New York, N.Y. 10004, unit  
that no sale of the said vessel has since been recorded in this office

X X X X X

; and that there are on record in this office the following mortgages, liens, or other encumbrances:  
Mortgage - McALLISTER BROTHERS INC.; Mortgagee - MARIN MIDLAND BANK - NEW YORK;  
First Preferred Fleet Mortgage, dated August 28, 1973, covering the whole of this  
vessel and all others; Amount = \$5,300,000.00 and interest and premium, if any, and  
performance of mortgage covenants; Date of Maturity = 28 May 1980; Discharge Amount -  
Same as the total amount; Received for record in this office on 28 August 1973 at 9:30  
A.M. in Book FM 283, Page 45. Endorsed on vessel's marine document at San Juan, P.R.  
on 31 August 1973 at 4:20 p.m.

X X X X X

Given under my hand and seal of office this

25th day of April, 1971

Hour and minute 10:00 A.M.

R.V. Kalaydian, Jr.  
H.V.KALAYDIAN, Documentation Officer

Minibus fee, \$1.00.

"Insert "no" or "the following," as the case may be.

GPO 196-600



SEAS  
PORTS  
CITY RIVER  
PORT CANALS  
STEAM TUGS  
COVERED LIGHTERS

**Mc ALLISTER BROTHERS INC.**  
**TOWING AND TRANSPORTATION**  
**17 BATTERY PLACE**  
**NEW YORK, N. Y. 10004**

TO TOWING  
TRANSPORTATION  
GENERAL LIGHTAGE  
  
HUDSON RIVER,  
CANAL - LAKE,  
HARBOR, SOUND  
and COASTWISE  
TOWING

TO DORT SAMUEL TOWING COMPANY  
P.O. BOX NO. 2095  
SAN JUAN, PUERTO RICO 00903

AND OWNERS

DATE

INVOICE NO

DECEMBER 30, 1970

DATE	SERVICES	FROM	TO	AMOUNT
------	----------	------	----	--------

CHARTER FOR THE MONTH OF DECEMBER

TUG MICHAEL McALLISTER  
TUG J.P. McALLISTER  
TUG LARUE McALLISTER  
TUG PETER D. McALLISTER  
TUG MELIL A. McALLISTER  
TUG ROBERT McALLISTER  
BARGE PLACO

TOTAL

\$60,000.00

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LIMITATION OF LIABILITY

The furnishing of any service or anything done in connection therewith, shall not be construed to be or to give rise to a personal contract, and it is understood that we and our tugs, we who furnish, and their owners, charterers, operators, managers and agents, shall have the benefit of all exemptions from, and limitations of liability to which an owner of a vessel is entitled, under the Limitation of Liability Statutes of the United States.

PILOTAGE

We do not furnish pilots or pilotage to vessels making use of or having available their own propelling power so that whenever any licensed pilot, or a person in any tug who has been engaged in the service of assisting a vessel making use of or having available his own propelling power, participates in directing the navigation of such vessel, in order to assist such vessel, or to furnish a tug, from on board such vessel or from elsewhere, it is agreed that he becomes the borrowed servant of the vessel assisted and her owner or operator for all purposes, and in respect of his services while so engaged being the work of the vessel assisted, her owner and operator, and being subject to the exclusive supervision and control of the vessel assisted, and that the compensation for such service performed by any such person is beyond the scope of his employment for us and neither those furnishing the tugs nor finding any such person, nor the tugs, their owners, charterers, operators or managers shall be liable for any act or omission of any such person. The provisions of this paragraph may not be changed or modified in any manner except by written instrument signed by an officer of this company.

With respect to vessels that are not owned by the person or company ordering the tug service, it is understood and agreed that such person or company warrants that it has caused the vessel owner to sign the provisions of the preceding paragraphs, and agrees to indemnify and hold us harmless, and also those furnishing the tugs and the tugs' their owners, charterers, operators and managers, from all damages and expenses that may be sustained or incurred in the event and/or consequence of such person or company not having such authority.

## DAMAGE REPORT

ALL QUESTIONS MUST BE ANSWERED.

This blank to be filled out and handed in at office of the company. All damages however slight must be reported at once. Report must be signed by the captain and by the pilot also if on board. Captains and pilots will be suspended or discharged for failure to report any damage preventable.

## PORT SAN JUAN TOWING CO.

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Tug Barbara McAllister Date Sunday 6, 1970  
 Damage occurred on the 6 day of Dec. 1970 at OCIO Oil Docks P.I.  
 Captain on duty Charles Padilla Pilot on duty Charles Padilla  
 Engineer on duty  Fireman on duty   
 Deckhands on duty P.J. Padilla  
 Draft Forward Vessel in tow  Draft Aft Vessel in tow   
 Bound from  to   
 Place and where accident occurred Alongside Entana Oil Docks  
 Distance from nearest shore   
 Name of boat damaged  name of owner   
 With  in   
 Name of boat doing damage  name of owner   
 EXTENT OF DAMAGE   
 NAME OF VESSELS IN VICINITY   
 Condition of tide  Direction and force of wind   
 State of weather   
 Radar Operating Yes No  
 Name and addresses of witnesses Charles Padilla, P.J. Padilla  
Port San Juan Towing Pier 9 San Juan

## STATEMENT

Give here full details. If collision, state when boat was first seen, whistles, bells given, time between bells, bearing of vessels, and if course was changed at any time displayed by each boat, etc., nature of damage and what you did to save the injured.

Also give diagram of existing condition at time of accident on reverse side of page.

white alongside barge "Entana" discharging oil at oil docks. The cook Emile Williams fell from the top deck of the barge while stepping onto the barge trailer. The office was called to an ambulance. The man fell on his back on the main deck of the boat. Two Ambulance men and Padilla took the patient to the hospital.

THIS STATEMENT GIVEN TO THE COMPANY ATTORNEY

Captain R. L. JonesPilot Charles Padilla

DEPARTMENT OF  
TRANSPORTATION  
U. S. COAST GUARD  
CG-924E (Rev. 3-67)

## REPORT OF PERSONAL INJURY OR LOSS OF LIFE

Form Approved Budget Bureau  
No. 48-R1426  
REPORTS CONTROL SYMBOL  
MVI-4016

## INSTRUCTIONS

- This form shall be completed for every loss of life and for every injury which incapacitates the injured for a period in excess of seventy-two hours (3 days). If the accident involves any vessel except those numbered under the Federal Boating Act.
- Injuries to longshoremen or harbor workers are not required to be reported unless the injury arises out of failure of ship's equipment, a vessel casualty, misconduct or negligence of ship's personnel or the injury results in death.
- A signed original and two signed copies shall be submitted as soon as possible to the Officer in Charge, Marine Inspection, U. S. Coast Guard, in whose district the accident occurred, or in whose district the vessel first arrived after such casualty.
- The master or person in charge is required to report in person to the Officer in Charge, Marine Inspection as soon as possible after the casualty occurs unless it can be shown that it was inconvenient to do so because of the distance involved. However, nothing shall relieve the person in charge of the vessel from submitting this report.
- This report should be completed in full. Blocks which do not apply to a particular case should be indicated as "NA." Where answers are unknown or none, they should be indicated as such.
- Report all vessel casualties or accidents on Form CG-2692, Report of Vessel Casualty or Accident. Attach a Form CG-924E to the CG-2692 for each person killed, missing or injured as a result of the marine casualty or accident.

TO: Officer in Charge, Marine Inspection, Port of San Juan, P.R.		DATE SUBMITTED 3/7/72	
<b>I. PARTICULARS OF VESSEL</b> 1. NAME OF VESSEL <b>BARBARA MC ALLISTER</b>			
2. OFFICIAL NUMBER <b>207815</b>			
3. VESSEL INSPECTED BY USCG <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
4. NATIONALITY <b>US</b>			
5. TYPE OF VESSEL (Pvt., pass., etc., etc.) <b>Tugboat</b>			
6. PROPULSION (Steam, Diesel, etc.) <b>Diesel</b>			
7. NAME OF OWNER(S) / OPERATOR(S), OR AGENT (Indicate which) <b>Port San Juan Towing Company - Operator</b>			
8. (a) NAME OF MASTER OR PERSON IN CHARGE (Indicate which) <b>RAFAEL CASES</b>			
(b) LICENSED BY COAST GUARD <input type="checkbox"/> YES <input type="checkbox"/> NO			
<b>II. PARTICULARS OF PERSON INJURED, DECEASED OR MISSING (Believed dead)</b>			
9. (a) NAME OF PERSON <b>EMILE WILLIAMS</b>		(b) HOME ADDRESS <b>Paseo Amparo 2490 G Levittown, P.R.</b>	
10. BOOK OR "Z" NUMBER <b>677673</b>		11. LICENSED BY COAST GUARD <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
12. STATUS OR CAPACITY ON VESSEL <b>Cook</b>		13. ACTIVITY ENGAGED IN AT TIME OF CASUALTY <b>Returning from liberty.</b>	
14. IF CREW MEMBER OR SHORE WORKER <input type="checkbox"/> ON DUTCH <input type="checkbox"/> WORKING <input checked="" type="checkbox"/> OTHER		15. (a) NAME OF IMMEDIATE SUPERVISOR AT TIME OF CASUALTY <b>Carlos Cardona</b>	
16. DATE OF CASUALTY <b>12-6-70</b>		17. TIME OF CASUALTY (Local or zone) <b>0015 LMT</b>	
18. ZONE DESCRIPTION <b>+ 4</b>		19. TIME OF DAY <input type="checkbox"/> DAY <input type="checkbox"/> NIGHT <input type="checkbox"/> TWILIGHT	
20. (a) DID CASUALTY OCCUR WHILE UNDERWAY <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		(b) IF YES, LAST PORT OF DEPARTURE <b>---</b>	
21. (a) VESSEL LOCATION AT CASUALTY (Latitude and longitude, distance and TRUE bearing from nearest object, dock, anchorage, etc.) <b>Cataño Oil Dock</b>		(c) IF YES, WHERE FOUND WHEN CASUALTY OCCURRED <b>---</b>	
22. (a) RESULT OF CASUALTY: <input checked="" type="checkbox"/> INJURY <input type="checkbox"/> DEATH <input type="checkbox"/> MISSING (Complete INJURY or DEATH entries below, as appropriate)		(b) NATURE OF INJURY <b>Reported pain in back.</b>	
(c) TOTAL DAYS INCAPACITATED <b>Not known</b>		(d) LOCATION OF INDIVIDUAL AT DEATH <b>---</b>	
(e) DATE OF DEATH <b>---</b>			
PREVIOUS EDITION MAY BE USED			

(Over)

DESCRIPTION OF CASUALTY (Give events leading up to casualty and how it occurred. Attach diagram & additional sheets, if necessary.)

12-6-70 at 0015.

Cook Emile Williams fell from ladder on top deck of the boat, while stepping off to the barge TRITON. Called the office to get an ambulance. Shift the boat to the dock to be able to put the man ~~in~~ ashore. The man fell on his back and may have internal injuries. The man was not moved until qualified medical personnel arrived. 0040 Ambulance arrived and took the man to Hospital. Sent deckhand Padilla along.

24 WITNESSES TO ACCIDENT (At least two, if possible)

NAME NONE	NAME
ADDRESS	ADDRESS
NAME	NAME
ADDRESS	ADDRESS

IV. ASSISTANCE AND RECOMMENDATIONS

25(a) MEDICO(Medical) MESSAGE SENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	(b) IF YES, GIVE DATE OF FIRST MESSAGE -----	(c) IF YES, GIVE TIME OF FIRST MESSAGE (Local or zone and description) -----
26(a) TREATMENT ADMINISTERED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	(b) IF YES, BY WHOM <input type="checkbox"/> SHIP'S DOCTOR <input checked="" type="checkbox"/> OTHER SHIP'S PERSONNEL <input type="checkbox"/> OTHER (Specify)	
27 BRIEFLY DESCRIBE TREATMENT (If administered by other than M. D.) Ambulance called and man dispatched to Fondo del Seguro Clinic.		

28(a) NAME OF HOSPITAL IF PERSON WAS HOSPITALIZED

Centro Médico

(b) ADDRESS OF HOSPITAL

Rio Piedras.

29 RECOMMENDATIONS FOR CORRECTIVE SAFETY MEASURES PERTINENT TO THIS CASUALTY

TITLE Captain

SIGNATURE

1 Antonio Obregón

## 2 STIPULATIONS

3 STIPULATED AND AGREED by and between counsel for the  
4 respective parties herein that the signature of Deponent hereon  
5 is expressly waived and that all objections except as to form  
6 are reserved to time of trial.

(Reporter and Deponent duly sworn.)

7 ANTONIO OBREGON

8 having been first duly sworn, was examined  
9 and testified as follows:

## 10 DIRECT EXAMINATION

11 BY MS. WERTHEIMER:

12 Q Could we have your name and address?

13 A Antonio Obregón; Babilonia Street DH-9, Santa  
14 Juanita, Bayamon, Zip Code 00619.15 Q Mr. Obregón, in December of 1971 what was your  
16 occupation?

17 A As a Chief Engineer of the tug Neil McAllister.

18 Q And by whom were you employed?

19 A By McAllister Brothers.

20 Q Do you know Victor Manuel Martinez?

21 A Yes, Ma'am.

22 Q Was he also employed on the tug Neil McAllister  
23 in December of 1971?

24 A Yes, Ma'am.

25 Q Do you know what his job was?

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1 Antonio Obregon

35

2 have to put the light on?

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3 A Down there, yes.

4 Q And how many times during the day do you as a chief  
used to  
5 engineer go down into that locker, if you remember?6 A During the day, well, sometimes I don't go there  
7 because that's not my compartment, I would be down there when  
8 we go to make some kind of repairs on one of the engines,  
9 because they got big parts of the engine there, and I have  
10 two lockers in my engine room, where I keep my filters and some  
11 kind of parts that you use on an engine usually, regularly.

12 MR. JIMENEZ: No more questions.

13 MS. WERTHEIMER: I have just one question.

## 14 REDIRECT EXAMINATION

15 BY MS. WERTHEIMER:

16 Q Did the Neil McAllister go to any other ports, other  
17 than the Virgin Islands? What ports did you mention that  
18 the Neil McAllister goes to?19 A It made trips to St. Thomas, St. Croix, made a  
20 couple of trips to South America, and Miami too.

21 Q Any other ports in the United States?

22 A Freeport.

23 Q In the United States. Miami is one.

24 A Jacksonville.

25 MS. WERTHEIMER: I have no further questions.

A Mr. John Norrod and Mr. Simpson, Capt. Simpson.

Q Did both of them arrange your employment or just one?

A Mr. John Norrod.

Q How did you get in touch with Mr. John Norrod first?

A By my own self, I went up.

Q You went up there?

A To McAllister Brother.

Q Where is that?

A San Juan.

Q Whereabouts in San Juan?

A Pier 9.

Q Pier 9?

A That's right.

Q Is that the name of the company you went to?

A McAllister Brother.

Q Is there another name for that company?

A I know McAllister Brother.

Q You don't know any other name for that company?

A I don't know.

Q There's no sign around with another name on it

besides McAllister Bros.?

A Just McAllister Brother.

Q That's the only name you know?

A There is no name on there, just I knew it was  
McAllister Brother by the name of the tug.

Q By the name of the tug?

A Yes.

Q We'll get to that later.

What was the first tugboat that you were employed  
on?

A (No response.)

Q If you remember.

A ROSEMARY MC ALLISTER.

Q Can you give me the approximate date on which you  
first began to serve aboard the tug ROSEMARY MC ALLISTER?

A September 27, 1969, something like that. '70,  
something like that.

Q About September 27, 1969.

A Or '70.

Q Or '70.

A Or '70.

MR. MC ALLISTER: Off the record.

(Discussion off the record.)

A The 28th of September, 1970.

Q September 28, 1970?

A 1970.

Q What was the document you were just looking at?

What document was that?

A That's a piece of paper I got.

Q Is that an official record of any kind?

MS. WERTHEIMER: He's got a scrap of paper in his wallet.

MR. MC ALLISTER: All right.

Q How long did you serve aboard the ROSEMARY MC ALLISTER?

A Between 28 -- that's -- I worked between October the 28th until the 17th of 1971.

Q What month?

A The month? December.

Q Until December 17, 1971.

A 1971.

Q So it was more than one year that you worked aboard the ROSEMARY.

A That's right--no, no, only the ROSEMARY, I used to

work on the BARBARA MC ALLISTER, the NEIL MC ALLISTER.

Q So, between October 28, 1970 and December 17, 1971, you worked aboard several tugboats.

A Correct.

Q And the names of the tugboats are the ROSEMARY MC ALLISTER, the BARBARA MC ALLISTER, the NEIL MC ALLISTER--

A PETER B. MC ALLISTER.

Q -- PETER B. MC ALLISTER. Any others?

A No.

Q Did you cease your employment on December 17, 1971?

A That's when I --

MS. WERTHEIMER: No, off the record.

(Discussion off the record.)

Q Is that the date of the accident, December 17, 1971?

A That's correct.

Q Now, after December 17, 1971, when was the next time you worked on board any tugboat?

A You mean after?

MS. WERTHEIMER: When did you go back to work after the accident?

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

EMILE A. WILLIAMS,

Plaintiff,

73 Civ. 4521

- against -

(C.E.S.)

McALLISTER BROTHERS INC.,

Defendant.

AFFIDAVIT

-----X

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS:

Teresa M. Rogers, being duly sworn, deposes and says:

1. I am the Assistant Secretary of the defendant, McAllister Brothers Inc, and have been Assistant Secretary since October, 1968.

2. To my personal knowledge, the accountants and auditors for McAllister Brothers Inc. have been Brout, Isaacs & Co. (at times called Brout & Company) since approximately 1950. Arthur Andersen & Company have never fulfilled that position for McAllister Brothers Inc.

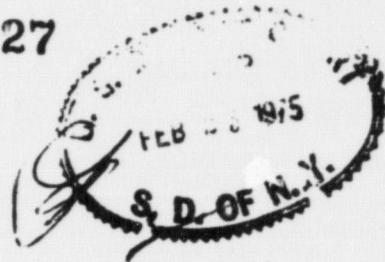
3. So far as I know, the only connection Arthur, Andersen & Company have or have had with McAllister Brothers Inc. has been as auditor of its Puerto Rican subsidiary.

*E. A. McAllister*  
Sworn to before me this 11  
day of September, 1974.

BRUCE A. McALLISTER  
Notary Public, State of New York  
No. 317731175  
Qualified in New York County  
Commission Expires March 30, 1976

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71 Civ 4521  
CES



It is unnecessary to decide whether McAllister Brothers Inc. ("McAllister") and Port San Juan Towing Company ("Port San Juan") should be treated as one entity, since even if the two were found to be the same, this case would be dismissed. We therefore assume as plaintiff argues and for purposes of this motion only that the two companies are one entity.

Plaintiff was employed in Puerto Rico by Port San Juan, a company insured under the Puerto Rico Workman's Accident Compensation Statute, 11 L.P.R.A. §1 et seq. Williams, when injured, received compensation under that Act which provides such compensation as the exclusive remedy against the employer.

We find this statute to be applicable here. See Alcoa Steamship

Co. v Perez Rodriguez, 376 F.2d 35 (1st Cir. 1967) and cases cited

therein. We do not have in this case the facts in Alcoa Steamship.

MICROFILM

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Co. v Velez, 376 F.2d 521(1st Cir. 1967), which led the First Circuit to distinguish its prior cases and to reach a different conclusion.

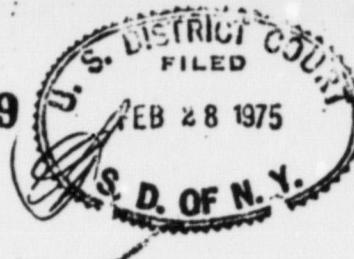
Summary judgment for defendant is granted.

SO ORDERED,

Charles J. Schlesinger  
U.S.D.J.

February 24, 1975

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EMILE A. WILLIAMS

- against -

McALLISTER BROTHERS INC.,

71 Civil 4521(C.E.S.)

JUDGMENT

The defendant having moved the Court for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure and the said motion having come to be heard before the Honorable Charles E. Stewart, Jr., United States District Judge, and the Court thereafter on February 25, 1975, having handed down its memorandum endorsed granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: that the defendant McALLISTER BROTHERS, INC., have judgment against the plaintiff, EMILE A. WILLIAMS, dismissing the complaint.

Dated: New York, N.Y.  
February 27, 1975.

Raymond J. Burghardt  
Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EMILE A. WILLIAMS,

NOTICE OF APPEAL

Plaintiff,

71 Civ. 4521

-against-

C. E. S.

McALLISTER BROTHERS INC.,

Defendant,

S I R :

PLEASE TAKE NOTICE that the plaintiff hereby appeals to the United States Court of Appeals for the Second Circuit from the entire order of the United States District Court for the Southern District of New York, made by the Honorable Charles E. Stewart entered on the 24th day of February, 1975, and the final judgment entered thereon on the 27th day of February, 1975, dismissing the Complaint herein and, each and every part thereof.

DATED: New York, New York  
March 20, 1975

Yours, etc.,

F. L. WERTHEIMER  
Attorney for Plaintiff  
Office & P. O. Address  
15 Park Row  
New York, New York 10038

TO: HEALY & BAILLIE  
Attorney for Defendant  
29 Broadway  
New York, New York

Williams v. McAllister

STATE OF NEW YORK )  
: SS.  
COUNTY OF RICHMOND )

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 21 day of ~~July~~, 1975 deponent served the within *Appendix upon Healy + Baillie*

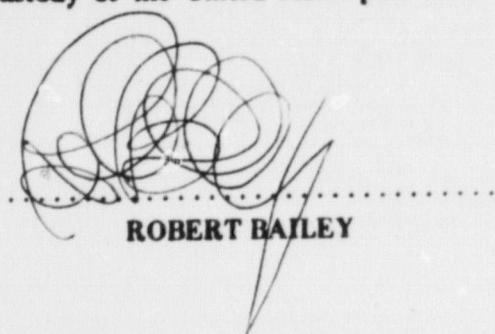
Attorney(s) for

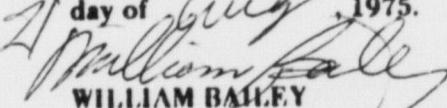
Appellee

in this action, at

29 Broadway  
N.Y.C.

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

  
ROBERT BAILEY

Sworn to before me, this  
21 day of ~~July~~, 1975.  
  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1976